

Cost recovery implementation statement

Development of food regulatory measures

2023-2024

Cost recovery involves government entities charging individuals or non-government organisations some or all of the efficient costs of a specific government activity. This may include goods, services or regulation, or a combination of them. The Australian Government Charging Framework, which incorporates the Cost Recovery Guidelines (the CRGs), sets out the framework under which government entities design, implement and review regulatory charging activities, consistent with the *Public Governance, Performance and Accountability Act 2013*.

31 July 2023

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1. Introduction

1.1 Purpose

This Cost Recovery Implementation Statement (CRIS) provides information on how Food Standards Australia New Zealand (FSANZ) implements cost recovery for developing food regulatory measures. It reports actual financial and non-financial performance information for developing food regulatory measures and contains financial and demand forecasts for 2023-24 and three forward years. Food Standards Australia New Zealand will maintain the CRIS until the activity or cost recovery for the activity has been discontinued.

1.2 Description of the regulatory charging activity

FSANZ recovers costs associated with applications to vary the Australia New Zealand Food Standards Code (the Code) in two circumstances:

- the applicant has elected to have the consideration of the application expedited; or
- the application is to develop or vary a standard and the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant.

Food standards can be varied in response to an application from an agency, body, or individual, or a proposal prepared on FSANZ's initiative. Decisions by the FSANZ Board to approve variations to the Code are subject to consideration by the Food Ministers Meeting (previously known as the Australia and New Zealand Ministerial Forum on Food Regulation, the Forum), whose members are ministers from the Australian, State, Territory and New Zealand Governments. The decision of the FSANZ Board to approve a variation for consideration by the Food Ministers' Meeting is a non-delegable decision.

The *Food Standards Australia New Zealand Act 1991* (FSANZ Act) establishes procedures for the assessment of applications to amend the Code. Similar procedures are established for proposals, but they are not relevant to this CRIS as no costs are recovered for proposals.

FSANZ assesses applications under one of four procedures, which are established and described in the FSANZ Act, the steps that must be completed by FSANZ are shown in Figure 1 below:

general procedure – the default procedure under which most applications and proposals are assessed. The general procedure is described in Subdivision D Division 1 of Part 3 of the FSANZ Act. It must be applied unless the conditions for the other procedures exist¹.

minor procedure – is only used if a variation does not alter the legal effect of a standard i.e. the procedure is only for correcting matters such as typographical errors. The procedure is not relevant to paid applications as cost recovery of minor procedure applications was repealed in 2019.

major procedure – is used for applications that would create a new food regulatory measure, would significantly change the scope of a measure or involve scientific or technical complexity, requiring extended consultation. Essentially, a major procedure

¹ Section 25 FSANZ Act. The other procedures are described in Subdivisions E, F and G.

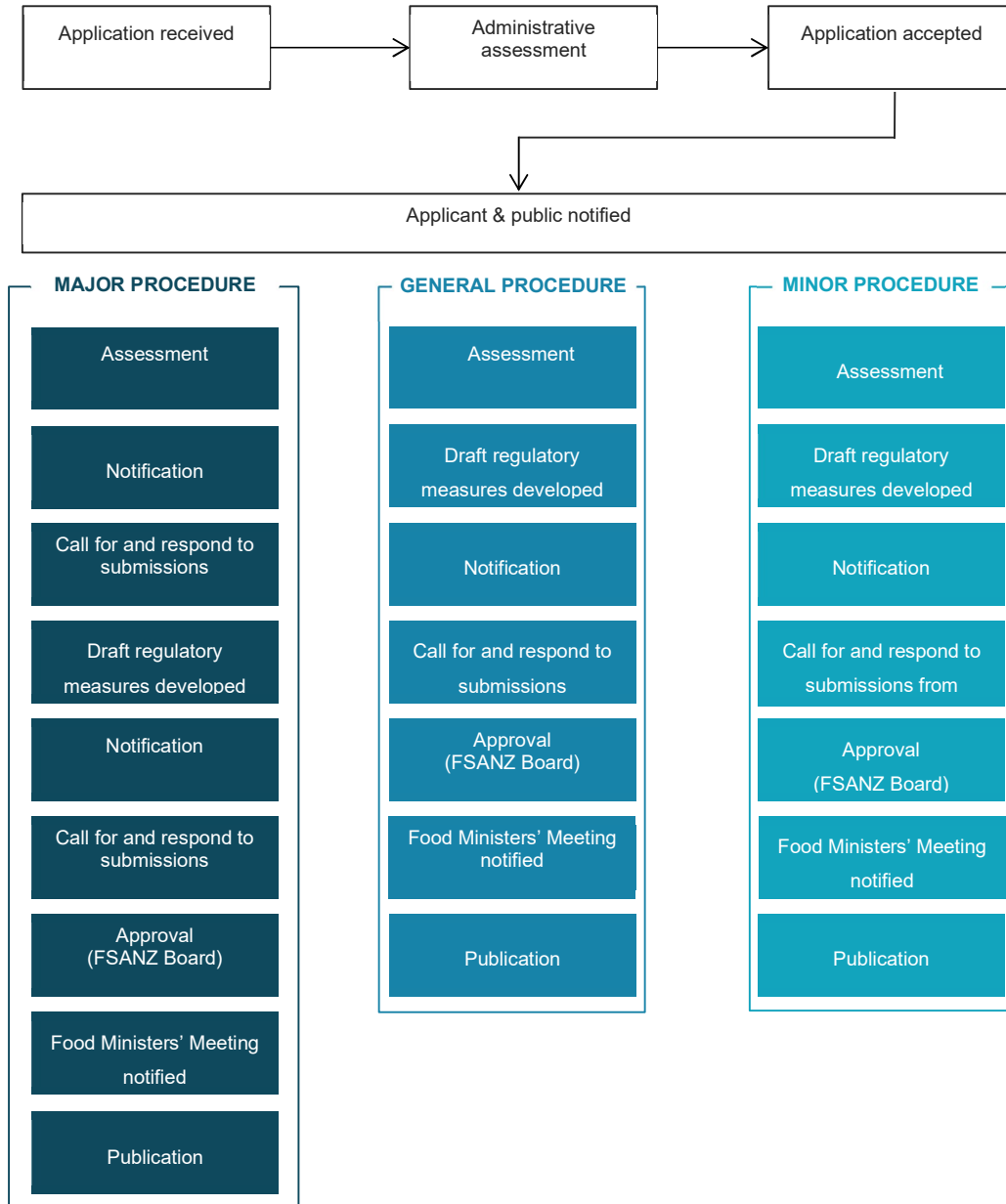
application is a general procedure application with an additional round of public consultation after the assessment step.

high level health claim variation procedure – is used to make a change in Schedule 4 of the Code to the list of high level health claims (section S4—4). The levels for this procedure mirror, generally, those for the general procedure. The high level health claim variation application requires a modification of the general procedure to include consultation with an independent expert committee that is mandated by the FSANZ Act and the Food Regulation Standing Committee, a policy advisory body established by the Food Regulation Agreement between the Australian Government and state and territory governments. FSANZ is not required to consult publicly under this procedure unless the applicant requests public consultation.

The assessment of an application includes activities relating to risk assessment, risk management, risk communication, legal drafting, consultation, general administrative work and standards management work. FSANZ employs a range of highly qualified staff such as toxicologists, food technologists, dietary modellers, labelling experts, microbiologists, social scientists and lawyers to undertake this work.

Cost recovery falls within the scope of the Australian Government Charging Framework (the Charging Framework). The Charging Framework only allows for charges to be applied to those that cause the effort, in this case, the applicant. Further, the FSANZ Act only allows for charges to applicants that receive a specific benefit that is not provided to the wider community. Cost recovery signals the actual cost of the activity.

Figure 1: Application assessment process



2. Policy and statutory authority to charge

2.1 Government policy approval to charge for this regulatory activity

In 1999, the FSANZ Act was amended to authorise FSANZ to charge a fee if:

- a) the applicant has elected to have the consideration of the application expedited; or
- b) the application is to develop or vary a standard and the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant.

The Government's Second Reading speech² to the 1999 Bill explicitly recognised charging based on full cost recovery. There has been no government decision to recover partial costs. Cost recovery is implemented through enforcement of provisions of the *Food Standards Australia New Zealand Regulations 1994*.

2.2 Statutory authority to charge

FSANZ's authority to recover costs is set out in section 146 of the FSANZ Act ([accessible at legislation.gov.au](https://www.legislation.gov.au)) which provides that the regulations may fix charges for services provided by FSANZ.

Part 4, sections 6B to 9 of the Food Standards Australia New Zealand Regulations ([accessible at legislation.gov.au](https://www.legislation.gov.au)) establish the rates of charging, identify the circumstances in which instalments may be paid and the process for paying refunds.

²http://parlinfo.aph.gov.au/parlInfo/search/display/display_w3p;db=CHAMBER;id=chamber%2Fhansards%2F1999-12-06%2F0006;query=id%3A%22chamber%2Fhansards%2F1999-12-06%2F0000%22

3. Charging (cost recovery) model

3.1 Outputs and business processes of the regulatory charging activity

The procedures for development or variation of food regulatory measures are set out in Division 1 of Part 3 of the FSANZ Act. The procedures have a number of distinct steps:

Step	Relative Sections of FSANZ Act	Activities included:
a) Receiving and processing an application	Section 22, 26 and 27	<ul style="list-style-type: none"> receipt of application by the Standards Management Officer; nomination of project manager preparation of advice about acceptance or rejection of application. decision to accept or reject an application must be made by the Board or a delegated Senior Executive Officer.
b) Assessing an application	Section 29,	<ul style="list-style-type: none"> assessments are performed by specialist risk managers, risk assessors and risk communicators; The level of staff engaged in the assessment task will vary depending on the issues raised by the application
c) Drafting variations to the Code	Section 30	<ul style="list-style-type: none"> specialist lawyers on instructions from the project manager develop drafting instructions based on what is included in the assessment item.
d) Public notification of decision	Section 28 and 34	<ul style="list-style-type: none"> the Standards Management Officer and the Communications team prepare and publish notification documentation.
e) Call for, and response to, submissions	Section 31, 32(2), 32(3)	<ul style="list-style-type: none"> the project manager and risk management team seek public engagement and consider responses, resource requirements are dependent on the level of engagement.
f) Approval	Section 33	<ul style="list-style-type: none"> A decision to approve or reject a draft variation must be made by the FSANZ Board. FSANZ must prepare and publish a report that provides reasons for the decision in a mandatory format. this activity includes input from the Board, the Board Secretariat, Standards Management, the project manager and risk managers and legal advisers.

g) Records Management		<ul style="list-style-type: none"> the Standards Management Officer, with some minor input by the Communications teams ensure that the documentation complies with Australian Government law and policy relating to the management of information.
h) Notification and registration of amendments to the Code. Registration of compilations	Section 92	<ul style="list-style-type: none"> food regulatory measures or variation are published by Gazette notice in Australia and New Zealand, and on the FSANZ website. the Code is a legislative instrument that must be published in the Australian Government's Federal Register of Legislation. this is work that is managed by Standards Management Officer with signing under appropriate Delegated authority.

While there can be minor variations, all elements, other than b. and e. are relatively generic for most applications. Elements b. and e. are variable because each application presents its own set of risk analysis issues.

3.2 Costs of the regulatory charging activity

3.2.1 Cost drivers and key assumptions

The key cost driver for FSANZ's work is staff effort, particularly the work done to assess an application, to call for submissions and to make and report on an approval or rejection decision. As approximately 70% of all costs are directly attributable to staff remuneration, the amount of time and effort spent assessing an application is the key driver of cost.

3.2.2 Design of cost recovery charges

The methodology adopted has two components:

1. A fixed charge that relates to activities that are relatively consistent for all procedures. FSANZ has surveyed staff who are engaged in the work that provides the components of the fixed charge to determine the amount of time usually allocated for each task.
2. A flexible charge that responds to variability that can occur because each application has some unique elements. The functions that result in variable costs are those related to assessment and consultation, where the work may require either more higher level input or more time, or both. Some applications result in very many submissions, and will have a higher total cost.

About 70%, of the fixed charge is incurred in the approval stage. The major driver of the cost of this stage is the FSANZ Board's role, which accounts for about half the fixed charge and cannot be delegated.

The approval effort is relatively consistent for all applications, although applications assessed under the major procedure will often require more than one consideration by the Board and will incur increased charges. Some applications will require consideration by the Board on more than one occasion. This is appropriate as the Board, not FSANZ staff, is the risk management decision maker.

The cost of the Board's exercise of its decision making power is driven by a Remuneration Tribunal determination that fixes an annual remuneration amount for Board members. For the purposes of the estimate we have assumed that a Board member will do FSANZ-related work for 140 hours each year. The Board sits on 8 days a year and attends four teleconferences. We have allowed for travelling time and for reading time prior to Board meetings. We have also allowed 240 hours for the Chair, who has additional Board-related functions.

The proposed rates are:

A flat rate charge for receiving and processing an application, drafting variations to the Code, public notification, records management, approval, publication and compilation
\$19 470

A variable charge for assessing an application, calling for, receiving and considering submissions, charged at a standard hourly rate for the staff doing the work. This variable charge applies to the assessment and consideration of submissions stages.

For work done by the Board Chair	\$435 per hour
For work done by a Board member other than the Chair	\$420 per hour
For work done by the Chief Executive Officer	\$288 per hour
For work done by a Senior Executive Service officer	\$220 per hour
For work done by a PRS officer	\$182 per hour
For work done by an Executive Officer Level 2.6 or Legal 2	\$164 per hour
For work done by an Executive Officer Level 2.5	\$161 per hour
For work done by an Executive Officer Level 2.4	\$156 per hour
For work done by an Executive Officer Level 2.3	\$152 per hour
For work done by an Executive Officer Level 2.2 or Legal 1.9	\$145 per hour
For work done by an Executive Officer Level 2.1	\$138 per hour
For work done by an Executive Officer Level 1.3 or Legal 1.8	\$133 per hour
For work done by an Executive Officer Level 1.2	\$128 per hour
For work done by an Executive Officer Level 1.1 or Legal 1.7	\$122 per hour
For work done by an APS 6 or Legal 1.6 officer	\$114 per hour
For work done by an APS 1-5 or Legal 1.1-1.5 officer	\$100 per hour

Table 1: Key components of the methodology

Component	Descriptor	Outcome
Billable hours	To determine the number of billable hours based on the number of working days in a year, FSANZ subtracted weekends (104 days), ACT public holidays (11 days) and FSANZ Christmas shut down (3 days) period, and personal leave (average 11 days), from the number of calendar days in a year (365) to establish that the number of working days in a calendar year. The FSANZ working day is 7h30m, but the billable hours are less than the standard hours per day as they are net of non-	6 hours per working day + 235 working days per annum

Component	Descriptor	Outcome																																							
	billable time spent on the supervision of staff, professional development and other administrative functions.																																								
Direct remuneration costs	<p>Superannuation: actual contribution rate for compulsory Public Sector Superannuation for all staff. FSANZ has applied 16.7% as this reflects the actual average contribution for superannuation across FSANZ as employees belong to a combination of superannuation schemes.</p> <p>Long Service Leave</p> <p>Recreation leave is not added as a cost. It is assumed that recreation leave will be taken during the year it is accrued.</p>	<p>16.7%</p> <p>2.5% of FTE salary</p>																																							
ASL	Average Staffing Level of the agency's core functions (excludes externally funded projects).	107																																							
Corporate costs	<p>Administration and salary costs for executive support, Operations (including Finance) and ICT sections, plus depreciation and accommodation costs.</p> <p>Corporate costs are allocated to all staff including the corporate staff. The corporate cost is \$40,208/ASL.</p>	N/A																																							
Fixed charge	Assumes	\$19,474 rounded to \$19,470																																							
	<table border="1"> <thead> <tr> <th>Level</th> <th>Hours</th> <th>Amount (\$)</th> </tr> </thead> <tbody> <tr> <td>CEO</td> <td>4</td> <td>1,152</td> </tr> <tr> <td>SES1</td> <td>4.5</td> <td>990</td> </tr> <tr> <td>PRS</td> <td></td> <td>0</td> </tr> <tr> <td>Legal 2</td> <td>2</td> <td>328</td> </tr> <tr> <td>EL2.6</td> <td>12</td> <td>1,968</td> </tr> <tr> <td>Legal 1.9</td> <td>1</td> <td>144</td> </tr> <tr> <td>EL1.3</td> <td>23</td> <td>3,059</td> </tr> <tr> <td>Legal 1.6</td> <td>0</td> <td>0</td> </tr> <tr> <td>APSL6</td> <td>2</td> <td>228</td> </tr> <tr> <td>Legal 1.5</td> <td>1</td> <td>100</td> </tr> <tr> <td>APSL5</td> <td>18</td> <td>1,800</td> </tr> <tr> <td>APSL4</td> <td>0</td> <td>0</td> </tr> </tbody> </table>	Level	Hours	Amount (\$)	CEO	4	1,152	SES1	4.5	990	PRS		0	Legal 2	2	328	EL2.6	12	1,968	Legal 1.9	1	144	EL1.3	23	3,059	Legal 1.6	0	0	APSL6	2	228	Legal 1.5	1	100	APSL5	18	1,800	APSL4	0	0	
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Component	Descriptor		Outcome
	APSL3		0
	Board - Chair	3	1,305
	Board - Member	20	8,400
Refunds	The charges will continue to establish a cap on the amount that may be recovered by FSANZ, except in the cases of applications classified as General Procedure Level 5 and Major Procedure.		N/A
	Flexible hours will be recorded and set off against the charge at the rates specified above. If the total cost of the work is less than the amount charged the difference will be refunded.		
	Fixed hours will be recorded for accountability purposes.		

3.2.3 Administrative charge

An administrative charge is an amount paid to cover costs incurred in the assessment process when there is an amount payable by FSANZ, such as gazettal costs or the cost of convening a statutory advisory committee (referred to as 'the required amounts'). The administrative charge cannot be used to meet FSANZ's normal operating costs.

Amendments were made to the FSANZ Act in 2016 to remove the requirements for newspaper advertisements. In addition, changes to how registration costs are calculated have substantially reduced Federal Register of Legislation fees. On the basis the administrative charge is fixed at \$1,000 for non-HLHC applications.

For high level health claims variation applications it is required by law that a High Level Health Claims Committee be established. We estimate the cost of the committee to be \$3,000 for each application, although we do not anticipate receiving a high level health claims variation application. This results in a administrative fee of \$4000 for HLHC applications.

Any monies not expended are refunded to the applicant and any amount incurred over the administrative charge will be invoiced. Accordingly, this charge does not result in any gain or loss for FSANZ.

3.3 Design of regulatory charges

The levels within the general procedure operate to transfer the risk of an application requiring more work than estimated to FSANZ. If an application is assessed as being within the first four categories of a procedure the decision operates as a cap on the amount that will be charged.

The charges are set out in Table 2.

Table 2: Charges

Procedure	Variable charge	Fixed charge	Variable	Admin charge	Total fees AUD
General procedure Level 1 or High level health claims variation procedure Level 1 ^{1,3}	Maximum of 240 variable hours	19,470	36,912	1,000	57,382
General procedure Level 2 or High level health claims variation procedure Level 2 ³	Maximum of 380 variable hours	19,470	58,444	1,000	78,914
General procedure Level 3 or High level health claims variation procedure Level 3 ³	Maximum of 540 variable hours	19,470	83,052	1,000	103,522
General procedure Level 4 or High level health claims variation procedure Level 4 ³	Maximum of 680 variable hours	19,470	104,584	1,000	125,054
General procedure Level 5 or High level health claims variation procedure Level 5 ³	More than 680 variable hours	19,470	104,584 ⁺²	1,000	125,054 ⁺
Major procedure	1050 variable hours or more	19,470	174,930 ⁺	1,000	195,400 ⁺

1 To simplify the calculation of the initial charge it is assumed that variable work will be done by Executive Level 1, Executive Level 2, SES officers and the Board in the proportions 60:25:15:0 in the General Procedure and 60:20:15:5 in the Major Procedure. The actual proportions in each assessment are likely to vary.

2 If FSANZ determines that the consideration process is likely to require more than 680 variable hours, a charge of the current hourly rate for each level will apply for each estimated hour above 680 variable hours

3 Add \$3,000 to the administrative charge for HLHC applications.

4. Risk assessment

The purpose of the risk assessment is to identify areas of implementation risk and inform FSANZ's risk engagement strategy.

FSANZ has implemented financial controls to ensure that it collects revenue due and payable. Application fees must be paid in advance via direct deposit, unless instalment options are available.

When analysing risk, FSANZ has considered our operating environment and the following factors that influence cost recovery:

- complexity
- materiality
- sensitivity.

FSANZ has determined that the risk is 'medium'. The risk rating does not determine whether cost recovery is appropriate, or whether some activities are more suitable for cost recovery than others.

5. Stakeholder engagement

For cost-recovered activities, stakeholder engagement is particularly important as cost recovery charges have a direct impact on those who pay them. Consequently, FSANZ will utilise existing channels and consultative forums to ensure that information is available to stakeholders are kept informed throughout the cost recovery process. Approximately 7000 people on our contacts database were advised of the call for comment on the last major CRIS update in 2019.

5.1 Industry engagement

Consultation is a key part of FSANZ's assessment process and its effectiveness relies on engagement with food manufacturers, retailers, importers, food service businesses and the agri-food industry. There are statutory requirements for consultation that effectively ensure that FSANZ receives a broad range of opinion on all applications, but FSANZ often consults directly with peak bodies on more complex issues. Submitters and interested parties are kept informed of the progress of assessments (as required by the FSANZ Act) in the FSANZ Work Plan.

FSANZ also provides regularly updated information of interest to industry on its website. A retailers and manufacturers liaison group meets several times a year to discuss matters of mutual interest. FSANZ also forms advisory committees with industry representation to provide expert advice as required.

FSANZ publishes an *Application Handbook* to assist potential applicants. Applications, consultation documents with associated supporting documents and submissions are published on the FSANZ website. Gazettes amending the Code are also published by FSANZ. Links to the New Zealand Gazette and the definitive legal versions of food standards on FRL are also published.

5.2 Engagement with jurisdictions

FSANZ is a component of a food regulatory system that has, as its source of policy advice, the Food Ministers Meeting, a body comprising ministerial representatives from ten Australian and New Zealand Governments. FSANZ develops food standards with regard to the policies developed by the Ministers.

The legislative authority to regulate food in Australia rests with the states and territories. The Australian Government has responsibility in relation to imported products, including foods.

FSANZ engages with the jurisdictions through the Food Regulation Standing Committee (as an observer) and the Implementation Sub-Committee on Food Regulation (as a member). It is also an active member on many working groups which report to these committees. FSANZ also manages jurisdictional technical and policy forums, which meet on a regular basis.

5.3 Community engagement

Food issues are of ongoing interest to many consumers and FSANZ provides a range of consumer and public health information in its day-to-day dealings with the wider community, including:

- social media e.g. Twitter and Facebook.
- capacity to provide feedback to FSANZ on food issues.
- updated information of interest to consumers on its website.

A retailer and manufacturers liaison group and a consumer and public health dialogue group meets with FSANZ twice a year to discuss matters of mutual interest. FSANZ also forms advisory committees with consumer and public health representation to provide expert advice, as required.

6. Financial Performance

6.1 Financial Estimates

Cost recovery fees are considered 'own source revenue' and are retained by FSANZ.

Table 4 reflects the forecast expenses along with the estimated revenue for 2023-24 and three forward years. Should there be any change to the cost recovery fees and charges as set out in this CRIS, a new financial estimates table will be provided.

Table 4: Estimated income from cost recovery 1 July 2023 to 30 June 2027

	2023-24 (estimated)	2024-25 (estimated)	2025-26 (estimated)	2026-27 (estimated)
Revenue \$ (to nearest '000)	950	1,000	1,050	1,100
Expenses (to nearest '000)	950	1,000	1,050	1,100
Balance (to nearest '000)	-	-	-	-

Following implementation of the cost recovery arrangement outlined in this CRIS, FSANZ will monitor cost recovery arrangements. Monitoring will involve periodic review (at least once every 12 months) of demand and expenditure. FSANZ will also monitor the level of on-costs and update the methodology if there are significant changes. Table 4 will also be updated each financial year.

6.2 Financial performance

FSANZ's cost recovery arrangements commenced on 1 July 2000 and have been reviewed on an ad hoc basis, with reviews conducted in 2002, 2009–10, annually between 2012 and 2016 and in 2019. In accordance with Australian Accounting Standards revenue from applications is recognised when expenses are incurred during the undertaking of the application process.

Table 5: Actual income from cost recovery

	2018-19	2019-20	2020-21	2021-22	2022-23
Revenue \$ (to nearest '000)	404	558	743	955	908
Expenses (to nearest '000)	404	558	743	960	909
Balance (to nearest '000)	-	-	-	(5)	(1)

7. Non-financial performance

In line with FSANZ's Performance Framework, the key performance indicator for Application activity is that Applications to amend the Food Regulatory Measures are considered within statutory timeframes (per Portfolio Budget Statements - FSANZ Outcome 1 Performance

Measures). Outcomes are reported in the FSANZ annual report, which can be accessed through the FSANZ Website.

8. Key forward dates and events

Over 2023-24 FSANZ will be undertaking a review of charging arrangement which will include consultation with stakeholders. The review will inform revises cost recovery arrangements and charges to commence in 2024-25.

9. CRIS approval and change register

Table 8:

Date of CRIS change	CRIS change	Approver	Basis for change
05/06/2018	Certification of the draft CRIS	Food Standards Australia New Zealand Board	New regulatory charging activity
05/09/2018	Certification of CRIS2018:1	Food Standards Australia New Zealand Board	Certification, after consultation
31/07/2023	Presentation changes to improve readability and update to financial performance measures.	Food Standards Australia New Zealand CEO	Outdated information.