

Comments from the Victorian Department of Health and the Victorian Department of Jobs, Precincts and Regions.

Due date of submission – 3 December 2021

The Victorian Departments of Health and Jobs, Precincts and Regions (the departments) welcome the opportunity to respond to this application to amend the Australia New Zealand Food Standards Code (the Code).

Proposal P1055 – Definitions for gene technology and new breeding techniques outlines a proposed approach to

- revise and expand the process-based definition for 'gene technology' to capture all methods for genetic modification (GM) other than conventional breeding; and
- revise the definition for 'food produced using gene technology' to include specific product-based criteria for excluding certain foods from pre-market safety assessment and approval as GM food. Foods that do not meet all relevant exclusion criteria would still require an application to Food Standards Australia New Zealand (FSANZ).

From the first Call for Submissions (CFS) it is understood that:

- the current definition of genetically modified food in the Code is outdated and does not represent current practices of New Breeding Techniques
- the preferred Option (Option 3) involves adopting a definition that is adequately flexible to accommodate existing and future technologies
- that safety assessments should be targeted to these products based on risk, and a hybrid approach that considers both the modification process and the product is recommended; and
- that the requirement for a safety approval should no longer be required for GM foods that are essentially identical to foods produced through conventional breeding techniques.

The departments note that the changes proposed result from extensive consultation through technical workshops and the advice of an expert advisory group, as well as commissioned research on consumer attitudes to New Breeding Techniques (NBT) and focus group report on attitudes which included participants from both Australia and New Zealand.

In earlier comments provided by Victoria to a consultation paper on this matter (February 2018) the departments noted that it would be desirable that the definitions in the Code be aligned with definitions in the relevant legislation in both Australia and New Zealand. The departments accept that this was considered by FSANZ, but that it was not possible to align with both countries' legislation; and that the definitions proposed for use in the Code will be restricted only to the manufacture of food as defined by the Code. However, the departments would appreciate a more considered assessment of any potential risk related to this non-alignment, such as implications for industry where segregation of ingredients or products that may be defined as genetically modified under the Code but not by the Office of the Gene Technology Regulator (OGTR), becomes necessary.

The departments accept that the definitions for genetically modified foods in the Code are outdated and do not reflect modern practices in plant and animal breeding, and would welcome clarification for industry, consumers and regulators as to which products require pre-market safety approval and which do not. The departments broadly support the proposed hybrid approach to consider both process and products in determining whether pre-market safety assessment and approval is required, noting that the criteria as proposed should be able to be clearly understood by industry and consumers. It is appropriate that food that does not meet any one of the listed criteria would be subject to pre-market safety approval.

In the CFS, at 1.6.1, FSANZ notes that the labelling of GM foods is out of scope of this Proposal to amend the Code. The document, however, suggests that only 'approved GM food' will be subject to the mandatory labelling requirements, from which it may be inferred that foods produced by NBT that do not require pre-market assessment will not be subject to GM labelling requirements.

The departments consider that any changes to the definitions in the Code should be consistent with the objects of the *Food Standards Australia New Zealand Act 1991*: that is, achieve a '*high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand*' and support a transparent and accountable regulatory framework that provides sufficient information to consumers to make informed choices. These objects, taken in association with the principles of the Australia and New Zealand Food regulatory system, as outlined in the Food Regulation agreement¹, are fundamental to consumer and industry confidence.

While the departments agree that GM labelling requirements are not a matter of food safety, they provide consumers and Australia and New Zealand's trading partners with information that facilitates making informed choices. The departments consider that there would be benefits to foods produced by new breeding techniques to continue to be labelled to inform that choice. This view is supported by the findings of the literature review and focus group report commissioned by FSANZ as part of this work: noting the paucity of well-constructed studies on consumer attitudes to NBT, the researchers concluded that, in general, NBT were considered preferable to older GM methods, but less preferred than 'natural' products. Importantly, these researchers identified that the lack of identification of the pathway to produce 'nature-identical' foods by GM methods could in fact increase consumer resistance to the use of NBT in the food chain. Moreover, in the focus group report it was noted that, as participants became more familiar with NBT concepts, a higher value was placed on regulation of these foods by participants.

¹ PRINCIPLES UNDERPINNING THE AUSTRALIA NEW ZEALAND FOOD STANDARDS SYSTEM

- (a) the protection of public health and safety;
- (b) the provision of adequate information relating to food to enable consumers to make informed choices;
- (c) the prevention of misleading or deceptive conduct; (d) the facilitation of access to markets, including:
 - (i) the promotion of fair trading;
 - (ii) the promotion of consistency between the domestic food standards of the Member States and international food standards; and
 - (iii) the desirability of efficient and internationally competitive food industries; and
- (e) the need for standards to be based on risk analysis using the best available scientific evidence and risk management principles.

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The departments note that FSANZ considers that enforcement may be difficult when NBT foods are identical to those produced by conventional breeding techniques, and that view is informed by a recent EU analysis of enforcement issues with these foods. While that analysis suggested that the use of traceability systems to manage enforcement is too onerous and costly, the departments note that rapid developments in traceability systems can support effective enforcement. The regulation of GM foods was highlighted as being important to consumers in the studies commissioned by FSANZ, and this matter should be considered in more detail by FSANZ prior to the second round of consultation on this proposal.

In response to the specific questions posed by FSANZ regarding the costs and benefits of Options 2 and 3 in the CFS, the departments have no information.