

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Beverages Council Limited

Which sector do you represent?

Food Industry

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[REDACTED]

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

Free text box, no character limit:

Without full transparency of scientific methodology, such as the process utilised to determine value assigned to components, the ABCL is unable to provide comment on the methodology used or how it could be improved.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The ABCL is not aware of other methodologies or evidence that the impact analysis (IA) should consider but as per previous response, without full transparency of the methodology used, the ABCL is unable to provide comment on the methodology used, and what others can be used, but does recommend methodologies should be based on robust scientific evidence.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The ABCL is not in a position to comment on the ratings assigned to each of the problems and sub-problems as we do not have full transparency of the scientific methodology, such as the process utilised to determine the value assigned to each of the problems and sub-problems.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

No

Additional comments (optional):

The ABCL does not support the amendment to the current wording regarding 'public health and safety' and does not believe there is confusion surrounding the definition. Both Section 3 (S3) and Section 18 (S18) already adequately define public health and safety, therefore they should remain as they appear in the Act, and not be further clarified or explained.

FSANZ already undertakes work that promotes healthy eating and a healthy food supply within its current remit, such as nutritional labelling and mandatory fortification of vitamins and minerals in targeted foods. The broader remit of better supporting the health of Australians through preventive health measures is already well funded and actioned adequately by health departments and agencies across the nation.

Further to this, all State & Territory and NZ Food Acts already define safe and unsafe in a manner that includes public health outcomes; redefining this in the FSANZ Act could potentially be contradictory to other definitions and cause confusion. A re-definition, which the ABCL reiterates it does not support, could also necessitate re-defining these key terms within other legislation.

Further, any deviation from the current objectives of FSANZ would create a conflict or disconnect with other similar agencies around the world. For example:

- United States' Food and Drug Administration's states its objective of protecting public health by ensuring safety, efficacy and security of their nation's food supply;
- European Food Safety Authority (EFSA) states they provide independent scientific advice on food-related risks,
- Food Safety Authority of Ireland (FSAI) similarly states they are a statutory independent and science-based body, dedicated to protecting public health and consumers in the area of food safety and hygiene.

FSANZ's core responsibility is to protect public health and safety by ensuring a safe food supply in partnership with food and health authorities. FSANZ does this by developing evidence-based standards for regulators and industry, monitoring the safety of the food supply, supporting consumers to make informed choices and coordinating food incidents and recalls in Australia. The ABCL believes that perhaps there is confusion around the definition due to lack of familiarity with FSANZ's authority and responsibilities.

The ABCL does not support an amendment to the Act or to FSANZ's remit to include addressing preventative and chronic health issues and sees this as a duplication of efforts and a wasteful use of government funding already well managed by other departments/agencies across state and territory level. Indeed, the ABCL believes that this pivot in focus dilutes FSANZ's ability to adequately address its principal focus, food safety.

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The ABCL does not support further clarification and is of the strong belief that such expansion of focus and remit could negatively impact and complicate the way FSANZ approaches applications and proposals. Such clarification would likely cause further delays than are already experienced in Australia and New Zealand (ANZ) to have applications and proposals approved by deterring from FSANZ's core remit of protection of public health and safety. Further to this, FSANZ already consider written policy guidelines from the Food Ministers Meeting (FMM) (when provided) and as part of this, would include public health therefore, no further clarification is required.

For example, as mentioned in the IA, the FMM in 2013, issued a ministerial guideline which indicates that "Public health and safety in relation to food refers to all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short term or long term, including preventable diet-related disease, illness and disability as well as acute food safety concerns." Therefore, it is the belief of the ABCL that clarification is not required and should not impact, materially, the way that FSANZ approaches applications and proposals and the factors they give regard to as it should already be part of its remit.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Negative

Additional comments (optional):

The ABCL does not see any value in clarifying the definition and as mentioned above, does not believe clarifying would have any material impact on how FSANZ operates, given, during the development of regulatory measures, it must have regard for ministerial guidelines. Therefore, the ABCL believes that clarifying the definition of 'protection of public health and safety' will have a negative impact for reasons such as:

- FSANZ's primary responsibility is to protect the public from immediate acute health risks through food standards setting.
- There are already programs in place, both at state and federal level, to achieve broad public health outcomes. Alongside these programs, sizeable Department of Health and Aged Care (DOHAC) funds have already been spent on researching and protecting community health through core population health budgets, and numerous government agencies and government have funded NGOs to oversee these programs/activities. The ABCL believes this division of focus and responsibility best supports outcomes for the achievement of preventative public health outcomes.
- Re-clarifying the definition for FSANZ could necessitate re-clarifying it within other pieces of legislation and/or regulation.
- Expanding FSANZ's remit to include a broad preventative public health focus would result in duplication of efforts, a waste of funding, a dilution of its core focus on food safety, and likely impact negatively on FSANZ's global reputation as a reputable food safety body.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

The ABCL supports this component in principle. Greater transparency on political influence such as the level of regard to which FSANZ has given to Ministerial Policy Guidance when developing food regulatory measures is a positive for industry.

ABCL acknowledges that communication of consideration of Ministerial Policy Guidance is already in place through various channels and mechanisms however, the effectiveness of this communication could be improved. The ABCL recommends a clear statement to indicate when a regulatory measure has been influenced by Ministerial Policy Guidance, so far as to defer from the position determined by FSANZ, as well as when there has been minimal or no consideration given to the Ministerial Policy Guidance. The ABCL recommends this communication to be either within the Communique following the FMM and/or within the approval report of the relevant proposal/application.

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Yes

Free text box, no character limit:

The ABCL supports the consideration of FSANZ's activities to better recognise Indigenous culture and expertise within the current remit.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

The ABCL does not have a formal position on how the Act might be amended to promote recognition of Indigenous culture and expertise but suggests deferring to how other countries such as New Zealand manage this topic.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.1. The ABCL reiterates its support, in principle, of greater transparency on revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures and recommends a clear statement indicating when a regulatory measure has arisen as a result of or has been impacted by Ministerial Policy Guidance. The ABCL also supports new provision and/or language changes in the Act to better support FSANZ to recognise Indigenous culture and expertise.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Yes

Free text box, no character limit:

The ABCL supports, in general, the introduction of a risk-based framework to support FSANZ to be flexible and proportionate in handling of Food Standards Code (FSC) changes. The non-alcoholic beverages industry has strongly expressed the need to expedite the approval process of variations to the FSC, specifically for low-risk applications similar to those already approved by FSANZ or those that are widely accepted across international jurisdictions in addition to minor administrative matters. Appendix D of the IA provides worked examples of how this framework may be applied and the ABCL strongly advocates for public consultation before the framework is endorsed by the FMM. This consultation process will allow for industry and other stakeholders to contribute insights from other jurisdictions where risk-based frameworks have been implemented. Additionally, it ensures the framework is tailored to meet FSANZ's core responsibilities and is fit-for-purpose.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The ABCL has not identified specific criterion and/or evidence that should be used to form the basis of a risk framework. However, ABCL suggests that FSANZ would be well positioned to defer to how other markets manage risks such as Health Canada and European Food Safety Authority (EFSA), as examples.

The ABCL notes that a risk-based framework should not preclude stakeholder engagement, consultation and feedback pathways, therefore, strongly recommends that public consultation is required during the development of this framework to ensure there are no gaps or unintended consequences during its inception.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Positive

Free text box, no character limit:

ABCL supports the risk-based framework in principle. Such framework is a strategic approach to enable FSANZ to allocate resources effectively by prioritising work and activities based on their level of risk. This would support the streamlining of current pathways to process minor variations such as, acceptance of risk assessments from overseas jurisdictions and creating new pathways to expedite low risk variations to the FSC. Employing a risk-based framework will not only reduce regulatory and cost burden on stakeholders but will incentivise businesses to use the application process to bring innovative products to market, thereby adding to economic growth and increasing potential trade opportunities.

We note that the IA includes an indicative risk framework to differentiate between low, moderate and high-risk amendments and that the level of decision-making arrangements involved at each risk tier would be determined by the proposed criteria. The ABCL suggests that it would be beneficial for industry (and stakeholders more broadly) to be engaged in the development of the proposed risk-based framework and any subsequent reviews. This involvement would help ensure the framework is appropriately tailored to manage risks in proportion to their significance and is fit-for-purpose. The introduction of a risk-based framework would also reduce the time & resources spent on applications and proposals and would allow FSANZ to allocate resource elsewhere.

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Yes

Free text box, no character limit:

The ABCL supports, in principle, enabling FSANZ to accept relevant risk assessments from international jurisdictions such as Health Canada, Ministry of Health, Labour and Welfare (MHLW) Japan or US Generally Recognised as Safe (GRAS) reports, as examples. The judicious consideration of such assessments would allow FSANZ to expedite the approval process of variations to the FSC specifically for low-risk applications that have already been approved and are widely accepted across international jurisdictions. Should FSANZ utilise such risk assessments, industry would expect to see some benefits such as reduced cost of applications (for cost recovered applications) and reduced timelines to approval. The ABCL would also support FSANZ in seeking reciprocity arrangements with those agencies it decides to accept risk assessments from.

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Yes

Free text box, no character limit:

In general, the ABCL supports recognising and adopting appropriate international standards such as those in the Codex Alimentarius, as an example. However, the ABCL does not believe that such recognition and/or adoption should be automatic, as some regulatory oversight measures would need to be in place. Public consultation should still occur to ensure the standard is fit-for-purpose and appropriate for the ANZ markets and that there are no

unintended consequences in adopting standards developed in other markets.

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Yes

Free text box, no character limit:

The ABCL supports the streamlining of current pathways to process minor variations of the FSC, such as acceptance of risk assessments from overseas jurisdictions and creating new pathways to expedite low-risk variations. Minimal assessments to determine the suitability within the ANZ context of dietary exposure and consumption trends, in addition to simplified targeted consultations with relevant stakeholders, would ensure those checks and balances are maintained to understand the impact within the food regulatory system.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Yes

Free text box, no character limit:

The ABCL supports in principle the introduction of principles in legislation to allow FSANZ to create other pathways to amend food standards as it will allow for flexibility in developing additional pathways tailored to specific circumstances. This could allow for FSANZ to better prioritise and expedite the review process and would allow for allocating resources more efficiently, focus attention on areas of greater concern and ensure a more responsive and adaptive regulatory framework.

However, the ABCL notes that further detail and information is required around this topic, and we recommend that industry and stakeholder consultation should remain a requirement for any amendments being made to food standards.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Overall, the introduction of new pathways could have a positive impact on industry as they will help expedite the approval process of applications and proposals, support innovation in manufacturing processes and products, as well as help reduce the resource and cost constraints on FSANZ and industry. Leveraging other regulatory bodies, especially for low-risk applications, would help expedite the approval process and allow for consistency across the industry, for example, the use of Codex Alimentarius definitions and adoption of standards from other international jurisdictions.

The ABCL strongly recommends that new pathways should include stakeholder engagement/consultation to ensure effective and efficient decision making and to ensure there are no unintended consequences from the introduction of these pathways.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

The ABCL notes there are several opportunities and areas that should be considered to ensure FSANZ can adapt and strengthen food standards to meet the needs of the food industry and ensure the safety, quality and integrity of the food supply:

- Stakeholder engagement: with regular stakeholder engagement, valuable insights can be shared relating to topics such as emerging trends, concerns, and innovations within the food industry, which may help identify areas where amendments may be necessary to address such topics.
- Global harmonisation: new pathways may lead to greater harmonisation and regulatory coherence globally, which in turn can facilitate trade and promote consumer confidence.
- Risk assessment and management: as mentioned previously, new pathways can provide the opportunity to accept risk assessments from overseas jurisdictions.
- Use of Codes of Practice (CoP): the FSANZ Act currently permits FSANZ to support CoP and there are existing industry voluntary CoP working successfully to support the safety and integrity of the food supply e.g., the Australasian Bottled Water Institute (ABWI) Model Code.

The ABCL strongly recommends that industry be given the opportunity (via public consultation) to provide comments on proposed amendments of food standards prior to them being finalised and gazetted.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

The ABCL partly supports and partly does not support the opportunities for decision making arrangements to be delegated.

We support the delegation from the FSANZ Board to the FSANZ CEO, given the FSANZ CEO is well placed to make decisions regarding amendments. The

ABCL recommends new pathways are underpinned by comprehensive risk-based frameworks to support expedited pathways for low-risk applications or variations and recommends there is clear communication and transparency to stakeholders surrounding the delegation of decision-making to the FSANZ CEO.

The ABCL does not support the delegation of decision-making arrangements from members of the FMM to departmental officials for the following reasons:

- Food Ministers (FM) should continue to be the final decision maker – FSANZ's role is to solely focus on assessing risk to public health and safety, standard setting and providing recommendations to the FMM. It is beyond FSANZ's or any other departmental official's role to be the final decision-maker for food regulatory measures that have a much greater impact on Australian lives than public health and safety.
- Any delegation of decision-making to other departmental officials by the FM will not support or promote flexibility or efficiency and will negatively impact transparency of decision-making and accountability of that decision-making (where lack of transparency already exists).
- Including Ministerial oversight provides a final checks and balance to the approval process.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The ABCL recommends that factors for determining the level of risk for decision-making should be made in line with the risk-based framework. For example, variations deemed low risk by the framework, where there is minimal impact to public health and safety, could be delegated to the FSANZ CEO, whereas decision-making for moderate & high-risk variations, particularly where there could be a cost to industry, for example, labelling changes or compositional updates, should not be delegated and the decision-making remain with the FMM for Ministerial oversight.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

The ABCL believes that should the streamlining of decision-making arrangements be implemented in line with the risk-based framework, where minimal check pathways for low-risk applications/amendments apply, then in theory, they can be approved faster, which would then positively impact industry. However, as mentioned previously, the ABCL does not support the delegation of decision-making arrangements for applications/amendments that may have significant impact to public health and safety, as we believe this could have a negative impact to industry.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

The ABCL supports the delegation of decision making from the FSANZ Board to the FSANZ CEO but does not support the delegation of decisions from Members of the FMM to departmental officials. Delegation of decision making would need to be very carefully considered and have the appropriate guardrails in place to ensure there is no risk of bias and there is appropriate oversight for a final check and balance of food standards approval. With regards to delegating to the FSANZ CEO, the ABCL believes that the expertise expected of a CEO would be broad-ranging and inclusive of complexities across the food system, the industry, policy and scientific approaches in risk management and assessment. The ABCL believes that FSANZ's independence is crucial for maintaining public trust in the safety and integrity of the food supply. Losing this independence through delegation of decision-making from FM to departmental officials will undermine its ability to fulfil its mandate of protecting public health and safety through the development of robust and evidence-based food standards. The ability for the FMM to delegate to department officials diminishes accountability and transparency around decision making.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Prefer not to respond / I don't know

Free text box, no character limit:

ABCL generally supports the idea of expediting the introduction of traditional foods or ingredients into the market. However, the ABCL does not believe that it will be a one-off investment as the list would need to be maintained and continuously updated. As such, we question who would take responsibility for maintaining and updating the list, and how does this compare to the management of novel foods? The ABCL requests further detail and information regarding this one-time investment and the continuous maintenance of the list, as well as a definition of traditional foods compared to novel foods.

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

The ABCL does not have a formal position on this because the use of traditional foods in our industry's beverages is minimal at best. However, we note in our response above, the need to define traditional foods and how they compare to novel foods. Currently the process to gain approval for novel foods is

burdensome and so few products make it to market under this classification. Therefore, it is ABCL's view that additional guidance materials on assessing the safety of traditional foods would likely facilitate the entry of these foods to market. Such guidance materials would also provide clarity and standardised procedures for assessing the safety of traditional foods and addressing potential barriers that may have previously hindered their entry to market. The ABCL notes that management of guidance materials for traditional foods should be done carefully to prevent the approval process from becoming burdensome and using unnecessary FSANZ resources.

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

The ABCL supports providing more resources to FSANZ to undertake more timely, holistic and regular reviews to assess standards within the FSC as is part of their core remit. Such resources and support would allow FSANZ to stay abreast of emerging scientific evidence, technological advancements, and changes in industry practices. This would also facilitate the identification of gaps or areas for improvement in existing standards as well as the development of new standards to address emerging risks and consumer preferences.

Such resources and support also require specific governance arrangements to ensure the views of stakeholders on the appropriateness and effectiveness of standards was included in the evaluation. ABCL recommends that before any amendments are made to a standard there is a robust process in place which includes public consultation to consider the appropriateness of regulatory updates to the Code as well as to seek stakeholder views.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

The ABCL notes that as well as more holistic and regular reviews of local standards, FSANZ should also have more holistic and regular reviews of standards based on international context. This holistic view for international standards will support greater global harmonisation of standards as well as help reduce technical trade barriers.

An example where global standards could be considered more holistically is the adoption of the JECFA framework for Steviol Glycosides. Both Australia and New Zealand are heavily involved in Codex work and therefore, would have had some involvement in the adoption of the JECFA framework for Steviol Glycosides. This framework means that all four production technologies for 960 are permitted under Codex for the production of 960a, 960b, 960c and 960d. However, currently under FSANZ FSC, 960d is not a permitted technology and the only way this glycosylation production technology and use of 960d would be permitted in ANZ, is to submit a new application to FSANZ. This application would come at a significant cost to industry as well as requiring significant resourcing in FSANZ. As the labelling of Steviol Glycosides as per the FSC does not differentiate by 960a-d, it is labelled as 960, the technical barrier resides within Schedule 3 of the FSC which regulates the purity of substances, including production technologies. Therefore, an update to Schedule 3 would be required to allow for the use of Steviol Glycosides produced by glycosylation.

This is a prime example of where FSANZ could readily and easily adopt the production technology for 960d under a risk-based approach, saving on resource for industry and FSANZ and also ensuring FSANZ's regulation remains competitive and consistent within an international setting.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Yes

Free text box, no character limit:

The ABCL supports the use of Codes of Practice (CoP) and guidelines as they are useful resources for industry, especially when the FSC is, in some cases, ambiguous. They provide a pathway for businesses to ensure compliance and offer an alternative to the lengthy process of updating food standards, which requires significant investment from FSANZ and industry. For instance, a short-term issue, affecting only one sector, can often be managed without needing amendments to the FSC. Where CoP are absent in ANZ the non-alcoholic beverages industry refers to the Codex Alimentarius CoP. Whilst this is not ideal, as often the international CoP don't cover legislation specific to ANZ, it is a strong indicator of the industry's need for this type of assistance to better interpret food regulatory measures. In some cases, FSANZ's reference to or acknowledgment of overseas CoP, as appropriate for ANZ context, could be sufficient endorsement for industry's use of such CoP without the additional use of resources.

The ABCL notes the importance of CoP and guidelines needing to complement food standards without straying beyond the scope of FSANZ's core remit. For example, the ABCL does not support the low-risk examples provided in the IA that CoP can be used in relation to sustainable packaging, or nationally consistent school canteen options and placement and promotion of foods in grocery stores. Sustainability and marketing & advertising are not within FSANZ's core remit and CoP and guidelines on these matters do not complement food standards.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

The ABCL believes the below examples could have been better solved by a Code of Practice or guideline:

Patulin in apple juice products: In 2020, there were several Australian apple juice products recalled due to high levels of patulin. FSANZ coordinated a national survey in 2021 and 2022 of apple juice and apple products in Australia to find out how much patulin they contained. Patulin levels were generally low and the results were used to assess food safety risks for consumers and FSANZ considered whether to recommend risk management measures. FSANZ conducted a dietary exposure assessment, and exposure to patulin for Australians was determined to be low, and therefore, it was determined that there are no food safety concerns associated with dietary exposure to patulin. This specific example is a good example as to how an issue was better solved by a CoP or guidelines, as it shows industry taking initiative of best-practice in the absence of country specific CoP and after consultation, FSANZ now endorse on their website guidance for industry to mitigate patulin risks.

Pregnancy warning label in alcoholic beverages: CoP could have been more beneficial to industry in providing different options on how to include a pregnancy warning on the label without mandating a coloured label, which can pose operational challenges for manufacturers that don't use coloured labels or manufacturers that face limitations regarding the maximum number of colours that be printed on a single package.

Food allergen labelling in restaurants and food service establishments: A CoP and guideline could be useful for food allergen labelling in restaurants and food service establishments to ensure clear & consistent communication of allergens on menus, such as they are communicated on labels of prepackaged food.

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

The ABCL believes the voluntary use of CoP and guidelines could be incorporated in the risk framework by assessing issues such as the examples referenced above, based on their risk to public health and safety and their impact to industry and consumers, as an example. Should issues be of low risk to public health and safety and minimal impact on industry i.e., the issue only applies to a select food category, then this would reduce the risk or need for an application or amendment to food standards and would encourage greater adherence to CoP or guidelines.

The ABCL reiterates its support for the development of a risk-based framework in consultation with stakeholders.

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Positive

Free text box, no character limit:

The ABCL supports CoP and guidelines being developed to support the FSC which would then benefit any stakeholder that uses the FSC, not just industry. They will also support addressing jurisdictional inconsistencies given States and Territories use the FSC for enforcement activities.

The ABCL believes that industry should absolutely be part of the stakeholder engagement to assist in the development of such CoP or guidelines but should not be solely responsible for leading the development. Conducting stakeholder engagement will highlight the key areas of ambiguity within the FSC and would allow for clear guidelines that would support businesses, particularly smaller businesses, in interpreting the FSC. The ABCL recommends that the use of these CoP should be voluntary to allow smaller businesses to work towards best-practice and larger businesses to ensure consistency across the industry.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.2 but reiterates its support of the development of a risk-based framework as well as the development of Codes of Practice and guidelines to complement food standards, however, with the engagement of stakeholders to ensure they are fit-for-purpose. The ABCL also reiterates its support of delegation of decision-making from the FSANZ Board to the FSANZ CEO but strongly objects to delegation from Members of the FMM to other department officials.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

The ABCL believes it is important to maintain a mixture of skills, knowledge and experience relevant to FSANZ's core remit and function on the Board. Any amendments should be carefully considered to ensure the Board's effectiveness is enhanced without compromising its ability to fulfil regulatory responsibilities.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Yes

Free text box, no character limit:

The ABCL believes that an open market nomination process that considers the inclusion of relevantly qualified private sector and civil society directors as the most effective model to enhance the efficacy of the FSANZ Board. An open market nomination process would present an opportunity to capitalise on much broader skillsets and a range of experiences of directors. The ABCL believes that it is critical when determining suitability, that sufficient regard is given to the establishment of processes that assess a candidate's experience e.g. statutory authorities, their representation of an industry as a whole rather than a specific brand or business, and that a candidate is deemed suitable in their own right as an individual.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Negative

Free text box, no character limit:

The ABCL does not support the removal of the option for applications to be expedited. Expedited applications are already cost-recovered, and industry pay heavily to use this pathway. The purpose of the paid expedited pathway is to ensure FSANZ are appropriately resourced to enable these applications to be reviewed and approved for use ahead of the non-paying applications. The proposal to remove this option and to retain some form of cost-recovery is not supported and will disincentivise food businesses/suppliers to invest or operate in ANZ, which in turn would stifle innovation, lead to greater level of uncertainty for industry and ultimately lead to trade barriers.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Negative

Free text box, no character limit:

The ABCL does not support the implementation of an industry-wide levy. The introduction of a levy and eligibility criteria for a levy will increase the already existing disparity between larger and small to medium businesses. We believe that, like other government bodies, FSANZ should be appropriately funded like any other government agency which provides a service to the public. The reduction in funding to FSANZ over the past two to three years has been a continual worry for industry. FSANZ, once a highly effective and efficient food safety agency, has now become a struggling, under resourced and stressed government body. Throughout this period, industry has experienced prolonged timelines to obtain crucial services such as application approvals and FSC amendments which FSANZ provides not only to industry but also on behalf of all Australians. The ABCL firmly believes that with appropriate government funding, FSANZ will be able to regain its former effectiveness and efficiency.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

ABCL does not support the implementation of an industry-wide levy. The introduction of a levy and eligibility criteria for a levy will increase the already existing disparity between larger and small to medium businesses. Industry already pays levies through fees associated with various applications and approvals.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

The ABCL does not support this option and strongly objects to the idea that a government body should be reliant on industry funding. If such an option were to be pursued, as a principal funder, precedent within other areas such as governance models for container deposit schemes, industry would expect to occupy half the seats on the FSANZ Board to ensure the appropriate governance, direction and execution of the funds industry provides.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

The ABCL does not support cost recovery from parties seeking amendments to the FSC. FSANZ supports or participates in other Government activities such as the development and monitoring of the Health Star Rating system, food recalls, and other broad public issues which impact considerably on FSANZ's resources. Rather than compulsory fees, ABCL suggests where FSANZ's activities have a broader or predominantly public benefit, this is an area which government should fund, not industry. This principle extends to services commissioned by federal and state governments, including its parent agency DOHAC.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

No

Free text box, no character limit:

The ABCL does not support the concept of a 'fee for service'. The ABCL believes that based on FSANZ's current remit there is no scope for additional entrepreneurial activities and FSANZ should focus on its core activities only.

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

The ABCL believe that a food recall coordination levy could possibly contribute to a more sustainable funding base. Food recalls can often be complex and cross-jurisdictional. As mentioned above, we believe that any work FSANZ does for state and territory bodies, such as a food recall, should be carried out on a cost recovery basis, with the jurisdictional government agencies funding this. However, the ABCL does not believe that industry should be charged for recalls given there is already a significant cost to a manufacturer for recalling the product. The ABCL requests further transparency on the cost recovery process to understand what the potential implication could be to industry should this levy be implemented.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

The ABCL requests further transparency on the current cost recovery process to be able to provide comment on eligibility criteria for a levy.

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Yes

Free text box, no character limit:

Charging other jurisdictions for proposal or project work would indeed support FSANZ to carry out this work, particularly if this work deprioritises other topics on FSANZ's workplan. However, the ABCL notes that unless FSANZ has sufficient base funding from government on an ongoing basis, it will not be able to carry out its core work which is food safety and standards. We would support jurisdictional funding if FSANZ's core budget issued annually by government was sufficient to cover its core work.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Neutral

Free text box, no character limit:

Cost recovery is a common thread throughout government and between the federal government and jurisdictions.

How would this need to be implemented to be successful?

Free text box, no character limit:

We believe this is an issue for federal and jurisdictional governments to negotiate.

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

We believe this is an issue for federal and jurisdictional governments to negotiate. We do not believe that industry should be charged for recalls given there is already a significant cost to a manufacturer for recalling the product.

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Positive

Free text box, no character limit:

Additional funding to FSANZ for additional proposal work would be positive for FSANZ which in turn would be positive for industry, in theory, as it will fund FSANZ to assign appropriate resourcing to the work. Without this funding, there are no barriers to mitigate the amount of work going to FSANZ from jurisdictions. However, as mentioned above, without core base funding to ensure FSANZ acquires the resources it needs to undertake its core duties, any jurisdictional proposal projects would only serve to further delays to reviews of food standards, approvals, applications and other core FSANZ duties. Therefore, it is important to ensure there are appropriate guardrails in place to manage FSANZ's workload and resource.

How would this need to be implemented to be successful?

Free text box, no character limit:

To be successful, FSANZ would need to be appropriately funded to obtain the resources to carry out its core remit as established when it was created –to create and develop uniform food standards – and only then negotiations should commence with jurisdictions on such additional work.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.3.

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

No

How would this need to be implemented to be successful?

Free text box, no character limit:

The ABCL does not support joint agenda setting between FSANZ and FMM. Currently the process for deciding the food regulation priorities allow for FSANZ to provide input into such priorities. If this process were to change, as is being suggested in the IA, the FMM may be in a position to override FSANZ and deprioritise or remove items from FSANZ's workplan. This would undermine FSANZ's authority and could adversely affect its role as an independent statutory authority responsible for their own decision-making process.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

The ABCL does not support joint agenda setting between FSANZ and FMM and believes it could impact FSANZ's roles as an independent statutory authority responsible for their own decision-making process.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

ABCL suggests the setting of food standards and other work undertaken by FSANZ is best directed by FSANZ. We are of the firm belief that, as the expert knowledge base, FSANZ is best placed to guide FM as it has visibility and deep understanding of:

- Standards setting in other country/regional food standards bodies, and multilaterally/globally via Codex and JECFA,
- The latest developments in research and relevant umbrella reviews,
- The food and beverages market in Australia and New Zealand.

ABCL believes FSANZ should bring this rich knowledge base and understanding to FM to help shape the direction of standards and FSANZ's work. In this way, FM can be assured that projects undertaken by FSANZ will be underpinned by a robust evidence base, include a deep understanding of how other regions have dealt with similar issues, and there will be assurance it will be adapted for our market. Also, by working in a more coordinated way within the broader food regulatory framework, this approach ensures that food standards are developed and implemented in a manner that protects the health and well-being of consumers in Australia and New Zealand.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

ABCL supports routine engagement between FSANZ and the FRSC to reduce duplication of efforts, as it will help improve understanding of responsibilities. It will also provide stakeholders with greater transparency of policy decision-making processes and technical expertise that FSANZ provides to the FRSC. We also support enhanced industry representation on the FRSC. ABCL are of the firm belief there should be one food and one beverages representative on the FRSC to bring specific sector expertise to that group.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

ABCL is of the view that the following approach would enhance collaboration as well as improve openness and transparency in decision making:

- Clear delineation of roles and responsibilities.
- Transparency between all parties – could yield substantially better regulatory outcomes.
- Earlier involvement of FSANZ and the FRSC to avoid duplication of efforts.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

The ABCL believes that FSANZ should only assume a role as database custodian for Australia should it be relevant and within FSANZ's remit. For example, FSANZ is already assuming a role as a database custodian via the Branded Food Database (BFD). Food manufacturers, retailers and other stakeholders support FSANZ by providing data for the BFD, which is being used to monitor and report progress of uptake of the front of pack labelling scheme, the Health Star Rating (HSR).

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

The ABCL does not have specific examples of what data would be useful to curate. ABCL supports the monitoring and reporting of the uptake of HSR currently underway via the BFD.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

The ABCL supports sharing of information with international partners. Such arrangements significantly enhance the ability of regulatory agencies to manage risks effectively. By leveraging shared knowledge and resources, regulatory agencies can conduct more comprehensive risk assessments and develop more effective risk management strategies.

Examples of how this could have a positive impact:

- FSANZ could use risk assessments from relevant international jurisdictions which could minimise resources FSANZ requires when reviewing applications and potentially increase the speed to market for new products, saving both time and money.
- It could limit any technical trade barriers if our standards were more aligned with international partners.

As already mentioned, any international standards or risk assessments as part of applications would need to be consulted with relevant stakeholders, but perhaps provide a more streamlined pathway.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

ABCL is of the view that the focus should be on:

- Leveraging valid and relevant risk assessments,
- Consideration of food standards within an international setting.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

No

Free text box, no character limit:

The ABCL does not support introducing Statements of Intent. We support the development of, and voluntary use of CoP and guidelines to improve consistent interpretation and uniform enforcement of food standards. Within the CoP, formal oversight by regulators such as FSANZ and other stakeholders can be incorporated, resulting in outcomes which provide clarity to industry, serve consumers well and satisfy government that appropriate levels of protection are provided.

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

The ABCL does not support Statements of Intent. We believe that CoP provide a more effective and useful guidance for industry, consumers and regulators than Statements of Intent.

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

The development and continuous maintenance of CoP and guidelines to be used voluntarily would support the consistent interpretation of food standards. Additionally, they will instil greater confidence among industry, consumers, stakeholders and government by ensuring the adequate levels of protection and the safe production of products. However, we note that currently each State and Territory Food Authority is responsible for the enforcement of food standards, and we support this remaining the same but with coordination from FSANZ to support the development and maintenance of guidelines to improve more consistent interpretation and enforcement of the Code.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

The ABCL does not have a formal position on this but support cultural consideration for First Nations and Māori peoples.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

The ABCL believes that greater collaboration with jurisdictional enforcement agencies, as well as the development of CoP, in theory, would foster more alignment and a more consistent application of regulations. FSANZ was created to bring about uniformity in food standards setting. Its original intent was as a body to coordinate the development of food standards to create uniformity of standards and their application throughout jurisdictions. The ABCL recommends the development of transparent processes to govern FSANZ-jurisdictional enforcement agency collaboration.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.4.

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

N/A

What are the current delay costs to industry?

Free text box, no character limit:

The ABCL does not have data on the current delay costs to industry.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

The ABCL does not have any additional data to provide.

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

The ABCL notes that Option 1 – Retain the status quo, is not a sustainable option and the lack of resources provided to FSANZ cannot remain. In order for FSANZ to be able to carry out its core remit and in order for businesses to innovate and provide more choices to consumers by bringing new products to market, additional funding is required for FSANZ.

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

The ABCL does not have any additional data to provide.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The ABCL notes that it is difficult to determine the effectiveness and impact of Option 2 – Modernise regulatory settings, proposed in this IA, due to the unknown outcomes of Section 5 of the IA. Option 2 proposes an industry-wide levy for the largest 5,000 food businesses in Australia at \$2,000 each which is additional \$10 million per annum for FSANZ. The IA suggests that this cost would be passed on to consumers. The ABCL strongly opposes an industry-wide levy and does not support passing an additional cost onto consumers during a cost-of-living crisis for funding that could be provided to FSANZ from Government.

The ABCL recommends that when the recommendation regarding section 5 is completed, that Option 2 of the cost benefit analysis is updated and is released for public consultation.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

The approach to assessing the degree to which an option solves a policy problem makes sense, however, the assigning of values to 'option 2' is predicated on the policy option being fit for purpose to address the identified issues with FSANZ. Numerous policy options, as identified above in our submission, are band-aid solutions and do not address the root cause or existing systemic issues within FSANZ, i.e. streamlining of application processes will provide no long-term support to address the chronic understaffing of the agency to meet existing or projected workloads.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Please see response above.

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

No

Free text box, no character limit:

The ABCL does not believe that the delivery risks have been appropriately identified and categorised within the IA and reiterate the need for more transparency around the methodology and risk rating to be able to provide appropriate commentary.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

The ABCL is not in a position to comment on the ratings assigned to each of the sub-problems as we do not have full transparency of the scientific methodology, such as the process utilised to determine the value assigned to each of the sub-problems.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

No

Free text box, no character limit:

The ABCL does not have any additional factors, other than those previously mentioned in our response, that should be captured in a future evaluation.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

The ABCL recognises the need for the FSANZ Act 1991 to be updated, given it has been in place for over 30 years with very few amendments in that time. The ABCL acknowledges that 'Option 1 - Retain the status quo' is not sustainable given the amount of change to the joint food regulatory system since the Act was developed and acknowledges the need to reform. Therefore, the ABCL is supportive of 'Option 2 - Modernise the regulatory settings' however, with qualifications.

The ABCL notes the four core policy problems and the sub-problems that have been identified in the impact analysis (IA) and has provided its response, within this document, to the proposed options for reform. From an industry perspective, below are some key bullet points, summarising our position to the majority of the ideas presented:

- The ABCL believes more transparency is required around the methodology used in the impact analysis to be able to provide a more robust position on the methodology used;
- The ABCL does not support the amendment to the current wording regarding 'public health and safety' and does not believe there is confusion surrounding the definition;
- The ABCL supports the development and implementation of a risk-based framework (with public consultation);
- The ABCL supports delegation of decision-making from the FSANZ Board to the FSANZ CEO;
- The ABCL does not support delegation of decision-making from Food Ministers to other departmental officials;
- The ABCL does not support an industry levy;
- The ABCL recommends funding from Government as per the status quo for other government agencies;

- The ABCL supports better collaboration with other international jurisdictions on risk assessments to help reduce resource and cost burden on FSANZ;
- The ABCL supports open market nominations for the FSANZ Board to consider the inclusion of relevantly qualified private sector and civil society directors.

Finally, given the enormity and complexity regarding the review of the FSANZ Act 1991, the ABCL recommends the opportunity for further public consultation to provide more transparency, particularly surrounding the methodology in how risk ratings are applied, as well as a more robust cost benefit analysis, following the decisions made based on this impact analysis.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

N/A