

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Sarah Lochrie

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Fonterra Cooperative Group

Which sector do you represent?

Food Industry

Other: :
Fonterra Cooperative Group

What country are you responding from?

Trans-Tasman organisation

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:

No comment.

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

Free text box, no character limit:

No comment.

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:

No comment.

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):

Section 3 and 18 currently include 'public health' within their scope.

We acknowledge that FSANZ must currently have regard for the Ministerial Policy Statements including that which provides one such definition for public health: "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". Given policy guidelines are covered within 18(2)(e) of the Act, we do not consider that any further amendments are required in the Act. Further, the Policy Statement is clear that FSANZ's work complements the role of public health agencies.

While we acknowledge the important role of diet in preventing non-communicable diseases (NCDs) it should be recognised that it is the whole diet and lifestyle approach which leads to these outcomes not individual foods or specific nutrients of concern. Approaches that support long term health and nutrition should be given regard to by FSANZ where a change may be applicable across the majority of the food supply to help consumers make informed choices (E.g. added sugar labelling).

As far as we are aware, FSANZ's work complements public health agencies and FSANZ currently consider both short- and long-term health in their standard process. We therefore, do not consider any clarity on definition needs to be applied as FSANZ must have regard for Ministerial Policy Guidelines as part of their due process (18(2)(e) of the Act.

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?

Prefer not to respond / I don't know

Additional comments (optional):

It is difficult to confirm the impact of a potential definition on FSANZ's approach to application and proposals without proposed wording. We are concerned that any definition for public health may be seen as a de-emphasizing safety within the objectives.

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

Neutral

Additional comments (optional):

Fonterra are concerned that clarifying the definition may have inadvertent unforeseen impacts on the interpretation of public health and safety within applications and proposals. As such, we do not consider any clarity on definition needs to be applied as FSANZ must have regard for Ministerial Policy Guidelines as part of their due process (18(2)(e) of the Act). If changes were made, any impact is dependent on the wording proposed.

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?

Prefer not to respond / I don't know

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

Free text box, no character limit:

Fonterra consider that FSANZ currently communicates consideration of Ministerial Policy Guidelines in their approvals reports and that this is working well. As such, we do not consider further transparency is required. Should revision be considered necessary, it may be a simple formatting approach to further highlight their consideration for those stakeholders unfamiliar with FSANZ approval reports.

Approval reports are available publicly for anyone to read and review. Perhaps, FSANZ's communication strategy could be improved to include some

education on current process such as commentary online to more clearly articulate FSANZ's role and approach to application of Ministerial Policy Guidelines within applications and proposals to help inform interested parties on where to find this information within approval reports. We also consider there is an opportunity for FRSC to provide guidelines to all government agencies to adopt a consistent communication approach.

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:

Fonterra consider that there are already good examples in NZ and Australian law that could assist in reflecting appropriate text for the FSANZ Act.

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:

No comment.

Component 2.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

Fonterra supports the introduction and development of a risk-based framework to allow FSANZ a more flexible and risk proportionate approach. Coupled with the ability to leverage overseas risk assessments this provides a real opportunity for step change within FSANZ. The development of such a framework will need to be developed and consulted on with stakeholders including industry.

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

Free text box, no character limit:

Fonterra consider that any risk framework will need a separate consultation to confirm, as well as inform on processes, decision making arrangement and how these align with risk level for consultations. The below are some very high-level thoughts and we look forward to further discussion on this in the future as development gets underway.

We consider the indicative framework in Table 10 is a good starting point for discussion, the examples provided don't adequately demonstrate how decision making would be made for the proposal. This is likely because the indicated criteria are a mix of both risk and decision related factors. Table 10 includes some relevant aspects which we'd expect to see in a risk assessment such as "risk to public health or safety" and "evidence base", however, others such as "expertise" may be less relevant to inform the risk as this can be obtained as needed. We believe that "strategic priority" should be weighted appropriately to reduce the risk that work which doesn't align isn't progressed.

We note that risks to trade, export and reputation are missing and could be added in future development.

We recommend that the framework applies a weighting of each of the criteria to the risk, and that weighting is clear in the framework.

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:

Fonterra considers that introducing a risk-based framework will enable more timely responses to applications and proposals. It would also allow for FSANZ's resources to be prioritized accordingly, enabling more time to be made available for the more challenging applications and proposals. It would

also provide greater agility in responding to risks and opportunities as a key enabler for innovation. Further, for industry this helps provides transparency and visibility for risk assessment prior to making applications reducing workload for both industry and FSANZ where discussion may otherwise go back and forth.

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:

FSANZ's ability to accept risk assessments from international jurisdictions would enable a timelier response to FSANZ through removing duplicative work that has already been completed elsewhere. This is particularly important in low-risk applications (e.g. globally approved processing aid) as it free's up FSANZ's time to be spent on the higher risk applications and proposals (e.g. P1024).

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:

Fonterra consider that in some cases adoption of international standards may be appropriate and could be a useful tool for FSANZ to enable a risk proportionate response. However, some form of risk-based review and consultation should be undertaken to ensure alignment with the local food regulatory system. As such, we do not support automatic adoption without consultation or consideration for the local food regulatory system. We are particularly concerned about the Table 9 reference to "no public consultation or ratification by the Forum required". We do support a minimal check pathway to leverage international risk-assessments and standards where applicable. The risk with any automatic adoption is ensuring regulatory fit within the Code and ensuring differences in country dietary intakes are considered.

While the concept to in the first instance adopt new Codex standards seems logical there is always the detail here to consider. We use this as one example to demonstrate why minimal check may be a better solution: Codex standards are developed through consensus with country delegations having input and debate. As such, final standards may not always include perspectives raised by the Australian or New Zealand delegations for inclusion, automatically adopting such standards means these considerations might not have an opportunity for localisation of the standard.

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:

Fonterra support the principle of a minimal check pathway for low-risk products. We agree that this would help facilitate risk-based handling of applications and proposals thereby improving efficiency for FSANZ. Permitting more time to be spent on higher risk work.

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:

We support the concept of permitting FSANZ to introduce new pathways to help ensure the food regulatory systems maintains agility into the future.

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

Positive

Free text box, no character limit:

Introduction of new pathways will potentially result in more efficient and timely reviews.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Component 2.2.3

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

Yes

Free text box, no character limit:

This provides opportunity for decisions to be made in a more flexible and efficient manner. There will need to be parameters around delegation to ensure its appropriate and fit for purpose. As well as a clear framework or communication strategy to ensure delegation is transparent.

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

Free text box, no character limit:

No comment.

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

Positive

Free text box, no character limit:

Fonterra consider that delegating decision should result in more timely standards development.

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

Free text box, no character limit:

Fonterra consider it will be important to have delegation clearly allocated and communicated in a transparent manner. Any delegated decision maker needs to be at the appropriate level to make such decisions and have the technical expertise to be able to make an informed decision with independence and impartiality from other interests.

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:

No comment.

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:

No comment.

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:

Fonterra consider it would be a poor use of resource to undertake reviews based purely on a time basis. We propose monitoring standards for performance and developing criteria for triggering reviews to occur. This should include timeframes for when problems are identified with a standard and action to be taken. Any programme implemented should include a robust triage process including consultation with industry to assess whether there are any issues with the standard warranting a review.

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

Yes

Free text box, no character limit:

There is likely some overlap here related to international standard recognition. Changes to international standards may be included as a potential trigger for FSANZ to review a standard locally for impact.

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:

Fonterra are supportive of guidelines provided it is clear how they are intended to be used. That is as guidance that is non-binding. Such guidelines should be developed in collaboration with industry as key stakeholders in the use of such documents.

FSANZ already have the capability to undertake this type of work, we would not want to see core activities deprioritised to undertake guideline development. Its also important to recognise that there is ongoing maintenance of documents to ensure they remain fit for purpose and aligned to 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:

Not a current issue, but a good example of where a guideline has been a useful to supplement a Standard is related to substantiation of health claims (Std. 1.2.7). In this situation, the standard could not reasonably detail best practice so the supplementary information in the guidance document is useful to help inform industry on requirements.

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:

No comment.

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:

We would expect a more practical and consistent application of the Food Standards Code. This may be particularly helpful for jurisdictional alignment on interpretation.

We do not consider that industry would be responsible for developing guidelines. We would be a key stakeholder in supporting their development. But to ensure their credibility and use by enforcement agencies these would not typically be led by industry.

Component 2.2

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

No

Free text box, no character limit:

No comment.

Component 2.3

Component 2.3.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

Fonterra strongly oppose the removal of the expedited approvals pathway as this will have a significant effect on innovation within the Australia New Zealand food sector. Without certainty on time to market and a mechanism for exclusivity to help protect investment, there is a risk that our food regulatory framework will become a barrier to market entry. Ultimately resulting in loss of research and development, reduced innovation, and a more limited range of products impacting on consumer choice. Without certainty on timing, overseas suppliers may choose to bypass and not launch their products in Australia and New Zealand.

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:

We understand that FSANZ has significant cost pressures and resourcing constraints. However, Fonterra do not support a levy on industry because the core functions of FSANZ are for the overall good of the food industry. Industry can currently pay for applications and receive the direct benefit of the application; we support this user pays approach. Should any new regulatory costs be progressed this may have an impact on the cost of food to the public, inflation and contribute further to the cost-of-living crisis.

Should this component progress, it requires a dedicated consultation to facilitate a productive discussion on the topic. We consider any levy being proposed must meet the MPI principles for cost recovery – transparency, justifiable, efficiency and equity. And there must be consideration for the difference in support provided by FSANZ across Australia and New Zealand (Chapters 1 & 2 only).

We have significant concerns over the ambiguity in the proposal as it relates to the top “5000 food businesses”. As this is not equitable and there are many questions raised over how this will be applied.

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:

A focused consultation on this needs to be undertaken should it be progressed. Any criteria should be assessed against the cost recovery principles.

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:

A focused consultation on this needs to be undertaken should it be progressed. It is important that any levy is subject to annual review and there is transparency on what it is being used for.

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

Negative

Free text box, no character limit:

While we agree this is consistent with a ‘user pays principle’ we are concerned it may have a negative effect on innovation. This risks becoming a barrier to market entry particularly for small businesses as the process is already complex and costly. The current paid expedited pathway permits applicants to obtain commercial capturable benefit via an exclusive use period, these are not always provided to unpaid applications as the benefit owner may be more than one company.

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:

Any additional activities undertaken by FSANZ should not impact their independence or credibility as a science-based organisation. It should also not impact on resourcing for core functions.

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:

No comment.

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:

No comment.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

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

Not Answered

Free text box, no character limit:

No comment.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

Component 2.3

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

Not Answered

Free text box, no character limit:

No comment.

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?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

Fonterra continue to recognise FSANZ as a science and evidence-based agency which should not require consensus from the FMM when setting the agenda, to ensure politics doesn't influence the agenda. There must be a separation between politics and the science in agenda setting. As such, we do not see a role for the FMM in setting a joint agenda.

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

Free text box, no character limit:

We do not support joint prioritization.

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

Free text box, no character limit:

No comment.

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:

FSANZ and FRSC currently have the opportunity to engage. Provided the outcome enabled greater understanding and didn't reduce flexibility or system agility there may be opportunity for further engagement.

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

Free text box, no character limit:

We do not consider that legislative change is needed to improve collaboration between these parties.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

FSANZ is currently resource constrained and we consider these should be priority to solve before provisioning additional resource demands and responsibilities. There are currently multiple databases available and while there may be some benefit in FSANZ assuming responsibility for some of these they could equally be managed by other agencies with support from industry to ensure the validity of any product data. We consider that there may be an opportunity for FSANZ to partner with other government departments delivering a more robust, cost effective and agile approach to the coordination of data on food and nutrition.

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

Free text box, no character limit:

Food composition data and Australian food recall information are logical fits for FSANZ as they can be directly related to FSANZ core activities.

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:

Fonterra support collaboration between FSANZ and international partners. We agree this would reduce duplication and help manage risk.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Risk assessments, food approvals and emerging food safety risks.

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

Statements of intent as legally binding statements must be consulted on.

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:

No comment.

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:

Fonterra agree that guidelines could help improve consistent interpretation and enforcement provided they are developed in consultation with stakeholders including industry and it is clear that they are non-binding as there can be more than one way to achieve a desired outcome.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

FSANZ already collaborates with jurisdictional enforcement agencies through the Implementation Subcommittee for Food Regulation (ISFR) but we note the high level roles in attendance here. We consider any inconsistency in interpretation could be managed in this forum including establishing ways of working to filter down interpretations to individual enforcement agents.

Component 2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

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

Free text box, no character limit:

No comment.

What are the current delay costs to industry?

Free text box, no character limit:

No comment.

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:

No comment.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

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:

No comment.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

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:

No comment.

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Other comments

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

Yes

Free text box, no character limit:

- Fonterra continues to support robust and fit for purpose food regulation that ensures the food supply is safe, and creates trust with both local consumers and export markets. It is important that our food regulatory systems remains agile and supports trade, innovation and continued local investment.
- Fonterra supports in principle Option 2 to Modernise the food system, however, there are some qualifications necessary as outlined below. We look forward to future refinement of components within this option.
- Paid expedited pathway must be retained as this provides industry with certainty on timing for bringing new products to markets.
- We strongly support a risk-based framework for the development of food regulatory measures. Including the consideration for overseas risk assessments.
- Fonterra support an outcomes-based food regulatory system that utilises a risk-based approach to enabling the delivery of efficient and effective food regulatory measures.
- We support the principle of a minimal check pathway to bring lower risk products to market.
- While not within scope for this review, we continue to suggest that trade be included as an objective and that the ability of FSANZ to utilise self-substantiated pathways should be reconsidered to help manage resourcing.
- We have selectively chosen to respond to only aspects of the consultation where we have some expertise to lend to the discussion.

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:

No comment.