

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:29:43

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::

CropLife Australia

Which sector do you represent?

Other (please specify)

Other: :

Agricultural Chemical & Plant Biotechnology Sector

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:

Much greater care is needed when drawing on existing literature. The limited number of citations adversely affects the ability of the Impact Assessment to represent current sector-wide issues and concerns. Moreover, how particular works are analysed and subsequently selected for inclusion needs to be reviewed. For example, reference 25 on page 33 (Sambu et al 2022) was retracted on the 9th of Jan 2024. Although this retraction was presumably while finalising the Impact Assessment, a range of high quality citations would have been expected when a point that requires careful discussion and nuanced interpretation like linking food additives to a range of adverse health outcomes.

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

Free text box, no character limit:

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 ratings provided are, on the whole, appropriate. However, the rating of Problem 1 Sub-problem 1 is perhaps higher than expected. Considering current FSANZ activities, confusion likely arises from the application rather than the act definition. A policy paper outlining, for example, how considerations of long-term health might impact individual product applications versus revising a labelling scheme would likely provide greater clarity.

Although only a minor score difference, Problem 2 Sub-problem 1 deserves the maximum score. As noted within the Impact Analysis and discussion in subsequent questions, considerable efficiency gains are to be achieved via a shift towards outcome-based assessments.

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):

As mentioned in Section 3, confusion likely arises from the application of the definition rather than the actual definition. A policy paper outlining, for example, how considerations of long-term health might impact individual product applications versus revising a labelling scheme would likely provide greater clarity.

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):

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

Neutral

Additional comments (optional):

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?

No

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

Free text box, no character limit:

It is unclear if an alternative communication would alleviate the mentioned stakeholder concerns. Although only a single standard was referred from the Food Ministers, this doesn't alter the possibility that the provision has the potential to open Australian and New Zealand food standards to politicisation.

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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:

Component 2.1

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

No

Free text box, no character limit:

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:

Risk-tiering analysis represents best practice that ensures safety and wellbeing while greatly improving the efficiency of new applications.

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

Free text box, no character limit:

Noting that as mentioned, further work is needed to refine any such model. However, the guidelines framework provided does appear like a reasonable starting position. Particularly noting that existing approvals and large bodies of evidence should greatly reduce risk.

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:

With the caveat that we do not directly apply for approvals, we expect the introduction of such a framework would facilitate a greater range of foods being introduced into the Australian market.

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:

As recent GM food risk assessment sharing with Canada has demonstrated, such relationships provide FSANZ with significant efficiency gains without compromising health and safety. With the significant similarities between the Australian system standards and other jurisdictions widening this sharing/adoption of risk assessments reduces the enormous amount of global redundancy in the process.

It further enables FSANZ to manage its total cost of operations without sacrificing community benefits of the scheme.

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:

Automatic acceptance provides an opportunity to rapidly and efficiently adopt international best practice (particularly when adopting provisions from the Codex Alimentarius). However, any changes need to be worded in such a way as to emphasise that the use of these standards is at the discretion of FSANZ and does not constitute a requirement or even a recommendation.

The development of a mechanism to support the use of international standards and the acceptance of risk assessments from international jurisdictions should be developed to ensure that FSANZ's workforce is appropriately guided on their use. Without it there is a risk that the efficiencies that could be gained by these opportunities may not be realised due to internal risk aversion.

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 proposal is consistent with the development of a risk-tiered approach to regulation with the objective of streamlining approvals without compromising wellbeing. This results in quicker pathways to market for food businesses. It will also help facilitate Australian innovation by removing barriers.

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:

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

Positive

Free text box, no character limit:

It is difficult to say for certain without precise details, however, new pathways would potentially streamline the assessment process.

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:

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:

Presently the FSANZ decision making process is highly cumbersome and risks ministerial intervention over and beyond the application of regulatory science that is focused on the Act's objectives of ensuring a high standard of public health protection. With the Board, Minister and Food Minister's Meeting exercising decision-making power, even applications or proposals seeking to introduce minor variation to food regulatory measures can be captured by this process. When considering specifically the Board, Section 150 provides an unnecessary restriction on delegation that is independent of any risk factors. This delays the decisions, duplicates assessment and provides an unnecessary burden on the Board and potentially complicates commercial decision making among the food industry.

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

Free text box, no character limit:

The outcome of any change needs to be the key factor in determining risk. Key factors in assessing this risk should include the scale (new versus variation), similarity to existing provisions, or acceptance in other jurisdictions. The proposed framework (Table 10 p51) and Appendix D encompasses these issues and highlights how a risk-tiered approach could operate. However, it should be noted that weightings of each criterion could impede its effective operation. Moreover, undue weighting on FMM priorities or their unguided interpretation greatly risks the politicisation of our food regulatory system and impedes its aim to '[m]aintain a strong, robust and agile food regulation system'.

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

Positive

Free text box, no character limit:

With the caveat that we do not directly apply for approvals, we expect the introduction of such a framework would facilitate a greater range of foods being introduced into the Australian market.

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

Free text box, no character limit:

Appropriate training, experience and role. Potentially a pre-approved list of appropriate individuals could be developed. As highlighted, this is a case-by-case consideration.

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:

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:

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:

Delays in reviewing standards serve as significant barriers of innovation. For example, P1055 - Definitions for gene technology and new breeding techniques has seen significant delays in implementation. The slipping of the expected timeframe for the second P1055 consultation, and subsequent finalisation, has created considerable commercial uncertainty. This has not only impacted the food industry, but indeed investment in the upstream innovation the proposal seeks to regulate through the agriculture sector and in advanced application of synthetic biology in food production. As a result, Australia has lost some of its standing with the global marketplace for this style of investment. The introduction of greater resourcing would ensure more timely competition. While holistic revisions would be welcomed, the priority needs to be on the timely completion of any review.

The review of the Act should also consider opportunities for FSANZ to direct resources into the more central and strategic proposal assessments. Options for this could include the ability for FSANZ to engage external scientific reviewers.

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

Yes

Free text box, no character limit:

It is critical that greater industry engagement be undertaken, and at regular intervals to ensure priorities are identified in a timely manner.

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:

Potentially this would ensure issues found to be low risk do not undergo the extensive review process. For example, Case Study 1 (Appendix D) provides a key example of a case where a lengthy assessment achieves little other than to delay market access to novel but highly similar products. Providing a rapid and cost-effective market pathway ensures access to safe and innovative foods.

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:

See previous question

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:

Component 2.2.1 outlines a threshold-based process for risk-tiering. An overall assessment pathway could be modified to include the creation of Codes of Practice/guidelines at lower risk levels.

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:

With many industries already having developed global Codes of Practice that ensure the long-term stewardship and public licence of their products, these could be incorporated into the Food Standards Code. This incorporation would greatly improve global regulatory harmonisation while ensuring the safety and wellbeing of Australian/New Zealand consumers. Just noting that multiple mandated codes for a given issue must be avoided.

Component 2.2

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

Not Answered

Free text box, no character limit:

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:

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:

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:

It would potentially reduce flexibility in the application process

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:

Although CropLife Australia is generally supportive of cost recovery, we have reservations with significant changes to existing provisions occurring within the context of this review. Particularly without clearly defined endpoints. Moreover, any cost recovery provisions need to take into consideration similar provisions in other agencies to ensure products to ensure pathways to market are not unnecessarily burdensome or duplicated among other agencies. Much greater industry-wide detail is needed to ensure that any such process do not compound each other and result in further increases to food prices.

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:

This is impossible to determine in an exercise such as this.

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:

This is impossible to determine in an exercise such as this.

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

Negative

Free text box, no character limit:

This would likely result in fewer products being brought to the Australian market and possibly higher prices for those that are.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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:

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:

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:

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

Neutral

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Annual Levy

Free text box, no character limit:

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:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

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:

Data sharing via central repositories facilitates access and use of data. The incorporation of all FSANZ-related data would ensure all stakeholders would have quick and easy access while also providing a comprehensive map of all related datasets.

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

Free text box, no character limit:

All publicly available data collected by or on behalf of FSANZ.

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:

As mentioned previously, sharing between FSANZ and Health Canada for GM food risk assessments has provided significant efficiency gains. Expansion of this data sharing would minimise global duplication of effort.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

A key focus could be the expansion of risk assessments sharing with Health Canada to non-GM foods where standards align. Moreover, additional trusted global partners could be identified.

Component 2.4.5

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

Not Answered

Free text box, no character limit:

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:

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:

Any steps to improve clarity would be welcomed.

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:

Section 13(1)(c) could be extended to explicitly include numerous groups, including First Nations Māori peoples. In addition, the inclusion of industry stakeholders could also address underlying issue partially addressed within the previous question.

Component 2.4.7

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

Not Answered

Free text box, no character limit:

Component 2.4

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Not Answered

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:

What are the current delay costs to industry?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Not Answered

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?

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Not Answered

Free text box, no character limit:

Other comments

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

Prefer not to respond / I don't know

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

Yes. Some parts of the submissions are confidential

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

Free text box, no character limit:

Please retract my name for privacy reasons and make the submission from CropLife Australia