

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:06:13

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Professor Jacqueline Bowden

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
National Centre for Education and Training on Addiction (NCETA)

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

Australia

Other: :
Australia

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:

A primary objective of FSANZ is to ensure effective protection for consumers against long-term health impacts and preventable diet-related diseases. However, this hasn't been adequately addressed in the Impact Analysis. The Impact Analysis has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. This is necessary, but insufficient to adequately address how FSANZ can effectively tackle long-term health impacts and preventable diet-related diseases. We advocate for the inclusion of a Modified Public Health Test (as outlined under component 2.1 of our response) in the Act to ensure the effective functioning of the food regulatory system.

In addition, we note that the Impact Analysis presents two options as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. For example, there is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both.

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?

No

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 below sub-problems with the most significant impact on the health and wellbeing of Australians and New Zealanders should be prioritised:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We disagree with allocating high impact ratings to sub-problems affecting a small number of businesses or well-managed food safety risks, as proposed in the Impact Analysis. The below sub-problems don't match the magnitude of risks to long-term health so should not have equivalent or higher impact ratings than sub-problems dealing with long-term impacts:

- Policy Problem 2, sub-problem 1: Statutory processes are rules-based rather than outcomes based
- Policy Problem 4, sub-problem 3: Inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies

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?

Yes

Additional comments (optional):

Amending sections 3 and 18 of the Act to define public health and safety could clarify FSANZ's role in addressing long-term health risks, including diet-related diseases. However, this alone may not substantially change FSANZ's approach, as its role in safeguarding long-term health is already established in a Ministerial Policy Statement and supported by both Ministers and the FSANZ Board. We propose including explanation of how FSANZ's approach may address protecting public health and safety.

To ensure effective consideration of long-term health risks, we recommend incorporating a Modified Public Health Test into the Act (as outlined under component 2.1 of our response). Additionally, we advocate for improved communication from FSANZ to stakeholders regarding its assessment of both short-term and long-term risks. We support amending section 3 to define 'protecting public health and safety' comprehensively and aligning section 18 with this definition. We endorse utilising the Ministerial Policy Statement's definition, with an amendment to encompass both acute and long-term health concerns, including preventable diet-related diseases.

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 proposed amendment to include a definition of public health in the Act merely formalises existing requirements outlined in the Ministerial Policy Statement, without changing FSANZ's obligation to consider long-term health. The inclusion of the definition aims to clarify FSANZ's role for external stakeholders. We recommend amending the Act to include a definition of public health consistent with the Ministerial Policy Statement, with the addition of diet-related risk factors, for clarity, but FSANZ's role in safeguarding long-term health is already established.

Regarding the Cost Benefit Analysis associated with this reform, we disagree that confirming FSANZ's legislated role in mitigating public health risks should be considered a cost, as this role is already established. We recommend removing this qualification from the Cost Benefit Analysis.

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

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

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 Ministerial Policy Guidelines already undergo industry assessments during their development, so there is no need for FSANZ to repeat this process when making its own decisions. We recommend amending section 18(2) of the Act to prioritise compliance with Ministerial Policy Guidelines. Other factors listed in section 18(2)(a)-(d) should only be considered once compliance with Ministerial Policy Guidelines is ensured. Compliance should be documented in a report which should be made publicly available on FSANZ's website. This aligns with Best Practice Element 1 from the Impact Analysis, ensuring clarity and consistency in FSANZ's objectives. Therefore, we recommend amending the Act to prioritise Ministerial Guidelines over other factors when making decisions.

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:

We strongly support greater recognition of Indigenous food expertise in the Act, emphasising collaboration with Indigenous-led organisations. Adequate consultation with First Nations and Māori people is vital for changes in the Act to reflect their culture and health needs. We recommend prioritising specific consultation with First Nations and Māori people and experts to ensure the Act incorporates Indigenous culture and expertise.

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

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

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

Yes

Free text box, no character limit:

The clarification of the definition of public health, as discussed in the Impact Analysis, is not likely to bridge the gap between the Act's objectives and its practical implementation in food standards. While ministerial policy statements and decisions provide substantial policy development, it is our view that the Act lacks clear guidance on achieving public health outcomes through food standards.

Introducing a definition must be accompanied by further guidance on its implementation within food standards, ensuring consideration of long-term public health outcomes across FSANZ operations. Therefore, we strongly recommend amending the Act to establish a set of considerations for FSANZ to prioritise and make decisions on proposals, applications, or standard reviews. These considerations aim to provide clear expectations on assessing public health benefits and risks in developing, reviewing, updating, and adopting food standards.

We support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below:

The Modified Public Health Test

Priority setting should consider:

- a) The burden of disease attributable to the food supply [1];
- b) Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;
- b) Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines [2];
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3];

- d) Assess the impact on the burden of disease attributable to the food system;
- e) Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply.

[3] for example added sugars and additives with known health risks.

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?

No

Free text box, no character limit:

We cannot support the risk-based framework as the Impact Analysis lacks sufficient details about its implementation. We require clear explanations on its application, decision-making processes, and appeals mechanisms to be able to assess its risks and benefits. The current information provided suggests an unequal approach favouring industry decisions as 'low risk' and public health decisions as 'high risk,' potentially expediting commercial decisions without public scrutiny, while slowing down public health decisions and opening them to the influence of commercially driven submissions from industry. This could worsen disparities in decision-making under the Act, impacting both timing and outcomes of those decisions. We're concerned this approach could harm public health, especially considering the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. We advocate for a separate consultation on the risk-based framework to address these concerns.

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

Free text box, no character limit:

We recommend that the Modified Public Health Test (as outlined under component 2.1 of our response) is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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

Prefer not to respond / I don't know

Free text box, no character limit:

The Impact Analysis provides limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty.

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?

No

Free text box, no character limit:

As the Impact Analysis lacks assurance on proper assessment of public health considerations, it is unclear whether accepting risk assessments from international jurisdictions would raise standards to meet the best public health outcomes. Harmonisation of food standards with international standards should only occur if they pass the Modified Public Health Test (as outlined under component 2.1 of our response), ensuring alignment with public health objectives. The bias towards classifying industry decisions as 'low risk' and public health decisions as 'high risk' may exclude public health considerations from this pathway. While some international evidence may lead to better public health outcomes, there seems to be no intention to accept risk assessments for broad public health measures. Hence, we support the adoption of determinations from non-conflicted bodies like the World Health Organization for public health measures, as mentioned in the Impact Analysis.

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?

No

Free text box, no character limit:

- Harmonisation with international standards should prioritise raising standards to achieve the best outcomes for public health and consumers, rather than lowering them. Therefore, standards should only align with international ones if they pass the Modified Public Health Test (as outlined under component 2.1 of our response).
- The proposed approach in the Impact Analysis risks favouring commercial decisions over public health considerations, as it may exclude public health decisions from potential pathways to amend food standards.
- The practical implementation of this approach remains unclear, particularly regarding FSANZ's process of "automatically" recognising standards. A harmonisation program should be developed and consulted on, specifying what standards should be harmonised and why, with consideration of the Modified Public Health Test (as outlined under component 2.1 of our response).

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?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

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

Negative

Free text box, no character limit:

The Impact Analysis does not adequately demonstrate how new pathways would encompass broader public health measures, raising concerns about potentially prioritising commercial interests over public health considerations. The assumptions made in Appendix D suggest that public health decisions would be automatically classified as 'high risk' without mechanisms to ensure resource allocation for public health proposals further exacerbates this issue.

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

No

Free text box, no character limit:

New pathways to amend food standards may not apply to public health measures, potentially prioritising commercially driven decisions that increase the availability of unhealthy foods and beverages. Opportunities exist to enhance public health by expediting public health measures and mitigating risks associated with removing public consultation for commercially driven decisions through the use of a Modified Public Health Test (as outlined under component 2.1 of our response). We suggest introducing statutory timeframes for proposals to ensure timely processing.

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:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

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

Free text box, no character limit:

The proposed risk framework (under component 2.2.1) for decision delegation should incorporate the Modified Public Health Test (as outlined under component 2.1 of our response) to assess risk levels. It's important to include specific questions about risk allocation for decision-making delegation in consultations on the risk framework. Any new decision-making process should undergo review after a period of operation.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Delegating low-risk decisions, following proper consultation and accurate risk assessment with the Modified Public Health Test (as outlined under component 2.1 of our response), can streamline decision-making and reduce delays. Current processes should still be followed for decisions that are not low risk. However, there is insufficient information about the risk framework to determine how streamlining might affect public health.

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

Free text box, no character limit:

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:

FSANZ should conduct targeted consultations with First Nations and Māori people and experts to understand their needs and preferences regarding the food regulatory system. Without meaningful consultation, there's a risk of commercialisation and potential exploitation of traditional foods by non-Indigenous groups.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food to market.

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:

We advocate for the implementation of the Modified Public Health Test (as outlined under component 2.1 of our response) to determine which reviews are undertaken and how they are prioritised. It is important to note that additional resourcing can be achieved without the need for extensive legislative changes, as outlined in Option 1.

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

Yes

Free text box, no character limit:

- Clear criteria should be established for conducting standard reviews, including both vertical (e.g., alcoholic beverages) and horizontal (e.g., sugar labelling) standards, to align with FSANZ's primary objectives.
- We recommend amending the Act to include statutory timeframes for standard reviews. We suggest a timeframe of 3 years from "decision to prepare" to "notification to Food Minister's Meeting" is proposed, with a potential one-year extension for exceptional cases.
- The Impact Analysis suggests Option 2 could lead to up to 8 standard reviews per year, but there is no mechanism or framework outlined to ensure this or justify FSANZ's capacity from a time and resource perspective.

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?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

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:

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:

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

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have been shown to be ineffective, unenforced and pose risks to public safety, health and confidence in the food system and we do not support this.

Please see:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

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

Yes

Free text box, no character limit:

The Impact Analysis does not guarantee more proposals or faster processing times. We recommend amending the Act to include statutory timeframes for proposals. Currently, proposals take an average of 3.5 years, and we propose a clear timeframe of 3 years with a possible one-year extension for exceptional cases.

Option 2 of Section 6, continuing with the delivery of 3 proposals per year, seems feasible, provided proposals are considered within a stipulated timeframe, allowing for thorough consultation and decision-making. However, it's crucial to ensure that any efficiencies gained do not compromise resources for public health proposals. Balancing efficiency with public health priorities is essential for the effectiveness of FSANZ's regulatory framework.

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:

We support the addition of additional skills to the FSANZ Board composition that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills, we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary

governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

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

No

Free text box, no character limit:

We oppose changing the current nomination process to an open market one. We do not support any decision that may reduce the number of public health positions on the Board. An open market process could potentially reduce both the quantity and quality of public health nominees, especially without clear details on how it would be implemented. Keeping the nomination process within public health organisations can prevent former industry representatives with health backgrounds from qualifying, thereby managing conflicts of interest effectively.

Component 2.3.2

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

Positive

Free text box, no character limit:

Expedited applications pose a risk of regulatory capture.

Component 2.3.3

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

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:

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:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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:

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?

Other

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?

No

How would this need to be implemented to be successful?

Free text box, no character limit:

We endorse FSANZ collaborating with Food Ministers to establish a shared agenda and strategic direction for the food regulatory system. However, we note that this already occurs. FSANZ attends the Food Minister's Meeting, where discussions on workload and priorities take place as a standing agenda item. This existing mechanism is readily accessible to FSANZ under Option 1, meaning additional changes are unnecessary.

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

Free text box, no character limit:

The Modified Public Health Test (as outlined under component 2.1 of our response) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

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

Free text box, no character limit:

Priority setting between FSANZ and the Food Minister's Meeting is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

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?

No

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings. Hence, these mechanisms are already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

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

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and Food Minister's Meeting to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

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:

We support this and request that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

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

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in Australia and New Zealand. Data that should be collected and curated includes data on:

- Food supply including composition
- Sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.

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:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

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:

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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:

We support amending the Act to ensure proper consultation with First Nations and Māori peoples, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. There are insufficiencies in current consultation efforts. We propose a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

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:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies, particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

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

No

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?

Yes

Free text box, no character limit:

As outlined in the Impact Analysis, two options are presented as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. There is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both.

The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this. The Cost Benefit Analysis must provide a more comprehensive breakdown of costs and benefits, considering impacts on industry, consumers, and governments separately for each type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and

benefits to consumers from proposals and costs and benefits to consumers from standards reviews). These impacts should not be treated uniformly, given their varying significance. Additionally, the definition of 'public health benefits' must be clarified, specifically whether it refers to reductions in non-communicable disease rates, reduced body mass index, based on dietary patterns or a mixture of these. Distinctions between definitions of short-term (primarily safety) public health benefits and long-term (chronic disease) public health benefits should be set out. Additionally, health, healthcare system and associated social and economic impacts should be quantified clearly for both costs and benefits for both consumers and governments.

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

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We find it unreasonable for delayed profits to a for profit industry to be considered at an equivalent level to the real health system costs borne by governments and consumers.

It is essential to clarify if industry costs presented in the Cost Benefit Analysis represent lost potential costs or lost real costs. Additionally, the delay costs to industry specified in the analysis are based on industry-provided data. We recommend using independent economic data applied to real world figures to ensure transparency and compliance with regulatory analysis standards.

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:

Data and expertise are available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health, particularly amongst public health and consumer groups. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

No

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?

Yes

Free text box, no character limit:

The Cost Benefit Analysis should include costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each type of FSANZ work separately. It should also specify what is meant by public health benefits, and separate out short-term and long-term public health benefits. Health, healthcare system, and associated social and economic impacts should be quantified.

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:

As mentioned previously, data and expertise is available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health, particularly amongst public health and consumer groups. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

Yes

Free text box, no character limit:

We disagree that Option 2 is more cost-effective in delivering public health benefits than Option 1, as there is insufficient detail to determine what these benefits are. The analysis has not considered the burden of disease, and the assumption that all applications, standard reviews and proposals only lead to public health benefits is not appropriate. The impact of reform options on costs of poor health to the healthcare system and consumers should be

modelled.

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?

No

Free text box, no character limit:

The Impact Analysis presents two options as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. There is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both. We also note that many of the reforms proposed under Option 2 are already accessible to FSANZ, suggesting that they should not be credited as advantages unique to Option 2. This highlights the need for a more nuanced evaluation that considers the overlap between the options and accurately assesses the impact of each reform element.

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:

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:

Bundling reform components into themes does not enable accurate assessment of risks associated with each component, as not all may be implemented, necessitating a separate evaluation of each. It is essential to delineate between confusion surrounding the public health objective and poor risk management related to long-term health, treating them as distinct risks rather than conflating them. The risk-framework and new pathways have implications for both short-term (food safety) and long-term (chronic-disease) health outcomes, requiring separate assessments for each. The absence of mandated resources allocated to proposals and standard reviews, such as legislated timeframes, poses a risk as it may not ensure FSANZ resources are utilised for these purposes, a factor seemingly overlooked in the risk assessment process.

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

No

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?

Yes

Free text box, no character limit:

Other comments

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

Yes

Free text box, no character limit:

The Impact Analysis acknowledges the inadequacy of resources allocated to FSANZ to fulfill its existing legislative obligations and potential new responsibilities stemming from proposed reforms. However, it fails to accurately represent the feedback of public health and consumer organisations in previous consultations, particularly concerning the potential impact of reform options on FSANZ's ability to safeguard public health and support informed consumer choices.

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: