

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:  
Greg Holland

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::  
Spirits & Cocktails Australia

Which sector do you represent?

Other (please specify)  
  
Other: :  
Beverage Industry

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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry of significant change have been adequately into account.

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

Free text box, no character limit:

The Budget impacts and cost implications of the reform options have been adequately accounted for and the Australian spirits industry was alarmed that the 'option' of an expanded industry levy to cover the increased operating costs of an unnecessarily expanded FSANZ was introduced into the Impact

Analysis. We also feel that the Impact Analysis failed to adequately account for the stifling effect of increased regulation on innovation and the inflationary effects of an increased cost burden on the food and beverages industry.

### 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:

### 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):

There are elements of the IA that warrant inclusion in FSANZ reforms, but other elements require such significant change, reflect missed opportunities, or present significant risks, that cannot be supported in their current form. We submit that there are widespread and deep concerns amongst stakeholders about the drift and scope creep into non-core areas that should be removed and not included in the Act, namely the proposals that FSANZ's role and function expand into population health.

We note the references in the Act to "public health" and the lack of a definition in the Act and the potential misinterpretation of this term as potentially extending to mean population health. Critically in these and other references, public health is connected to safeguards and consumer protection for the health of the public, not the broader definition of Public Health Medicine or population health. Current references to FSANZ providing "support" to these broader health system objectives is sufficient and appropriate to avoid confusion, dilution or diversion of focus from the core objective of FSANZ.

We therefore do not see justification for the assertion that 'Using the language of regulation, the Act is designed to: protect the public by reducing foodborne illness and promoting population health.

On the contrary, we see no reference or specific objective in the Act to these issues.

There is, nor has there ever been any reference in any version of the Act to 'promoting population health', nor has there ever been any reference to the Public Health medicine objectives as defined by the NHMRC or Faculty of Public Health Medicine.

There is no specific definition of the term 'public health' in the Act and the Impact Analysis concedes that "there is currently ambiguity around FSANZ's broader role in achieving public health" and other broader objectives but we do not agree that this ambiguity extends to the food and beverage sector who have raised significant concerns during the consultation process about extending FSANZ into what the IA concedes is a broader role in public health.

We highlight this particular issue as emblematic of the potential diversion of FSANZ away from its stated purpose and priority objective of food and safety standards that protect the community, provide confidence in the industry yet still permit the industry to operate and grow.

Spirits & Cocktails Australia and the Australian Distillers Association agree that 'the Act is not fundamentally flawed or ill-equipped to deal with the market failures it is designed to address' but that there is always opportunity to improve FSANZ and to safeguard the food that Australians and New Zealanders eat, and the beverages they drink.

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?

Yes

Additional comments (optional):

The risks associated with dragging FSANZ into the population health area has been recognised by many submissions through the public consultation process but perhaps the most telling are the comments made on this issue by the South Australian Government submission and Victorian Government submission.

In its submission the Victorian Government stated that: "FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient its focus to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

We completely agree with the concerns raised by the Victorian Government and call on the Commonwealth to take heed of this warning.

The Food Governance Node submission states that “We do not support this expansion of FSANZ’s role and responsibilities. FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas.”

These submissions highlight the significant risks of dilution and diversion of FSANZ focus and resources away from the core objectives of protecting the health of the public.

Critically, the IA summarises the distinction between ‘public health’ as the health of the public as opposed to the sectoral and specific reference defining it as population health with an extension of standards and labelling into preventative health and epidemiology. Specifically, the IA acknowledges that “food consumption patterns” are an important driver of “broader public and population health” and we would agree that these population health objectives are part of a much broader definition that extends beyond the necessary objectives of the Act.

Spirits and Cocktails Australia disagrees with those who incorrectly assert that “the Act in its current form does not enable the food regulatory system to meet its primary goal of protecting public health - specifically long-term health and preventable diet-related disease.” The food standards are encapsulated in the Australia New Zealand Food Standards Code as mandatory requirements that cover issues such as:

- food safety and handling
- food labelling and advertising
- food composition, including contaminants, residues, and additives.

These food standards clearly focus food regulation on health and safety, as opposed to population health objectives and activities.

In summary, we see significant risks in the effective operation of the Food Standards regulation and that it is not a simple process to redefine the Act and to shoehorn population health objectives such as acute and long-term health elements into the Act.

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

Negative

Additional comments (optional):

Spirits and Cocktails Australia support well-considered reform that maintains a high level of integrity in Australia’s food regulatory system and, in turn, maintains community confidence while delivering important efficiencies. All efforts must be made to ensure regulatory systems remain fit-for-purpose, risk-based and proportionate, and provide certainty and clarity.

On the issue of ‘public health’ we agree that “Clarifying the definition of ‘public health promotion and ‘public health and safety’ within the Act – and aligning this definition with other instruments such as the FRA – may enhance clarity around the role of food standards in food regulation and policy” however we do not believe that this definition should be extended to include the sectoral and specific objectives of population health.

In its submission to the consultation process, Alcohol Beverages Australia (ABA) warns that the proposed reforms expand FSANZ’s role to that of a directive-setting preventative health agency and that this will only increase the regulatory burden for industry, while increasing cost and reducing choice for consumers, including in export markets: “ABA believes the more expansive interpretation of public health as it relates to food safety, into contemporary approaches to preventive health in addressing issues such as diet and obesity creates a number of significant problems: it is inconsistent with the focus of FSANZ’s responsibilities; it shifts resources away from industry priorities around innovation and assessing applications, and; it duplicates the work of other government agencies, including at the state and territory level.”

In its submission the ABA does not support changing the wording in s 3 or s 18 of the Act to broaden the scope of public health and that FSANZ is already empowered under s 3(c) to ensure consumers have adequate information to make informed choices, including information about longer-term health and chronic illness as a result of diet, and this has led to the development of health star ratings, as an example. “‘Public health’ should be only interpreted under its original intention which is to first satisfy the primary objective of being related to food safety.”

Produce Marketing Association Australia New Zealand submission states that the focus on FSANZ should not extend to non-food safety population health: “Currently there is opacity around FSANZ’s role in supporting PH&S objectives and its involvement in non-food safety issues, such as promoting healthy eating and protecting consumers from diet-related diseases. This role should remain the protection of the health and safety of consumers by reducing risks related to food and enabling consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled.”

In addition, Spirits and Cocktails Australia is concerned that this proposal may be at odds with the ‘Agreement Between the Government of Australia And The Government Of New Zealand Concerning A Joint Food Standards System’ (the Treaty) , namely (c) export requirements relating to third country trade and (5) The provisions of this Agreement shall in no way affect the cooperation between the Member States and their agencies on health and food-related issues falling outside the Australia New Zealand Food Standards System established by this Agreement.

The Treaty clearly limits FSANZ to the development and maintenance of joint food standards that may include any related guidelines, codes of practice, and any supporting material, and while FSANZ must be able to engage internationally, it has neither the authority nor the administrative or functional direction to engage in international advocacy.

As with a number of proposals put forward in the RIS and the IA, Spirits and Cocktails Australia and the Australian Distillers Association do see the need

for extending FSANZ into areas outside of its core business but more importantly we significant risks associated with overextending FSANZ and compromising its effectiveness, and/or increasing the costs and regulatory burden that then negatively impact on the industry and consumers.

### 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:

Spirits and Cocktails Australia believes that FSANZ is a high performing organisation that does an excellent job in the administration of the Act and regulatory functions and responsibilities, while acknowledging that any improvements in the clarity and transparency of the food regulation and standards will benefit the industry, consumers and the community.

Guidance and commentary may provide clarity and direction from Government on health policy and food regulation, but it is important to remain cognisant that the Australia and New Zealand Ministerial Food Ministers Forum cannot amend or alter the Act or direct FSANZ to act outside of the limitations and directions of the Act.

In Section 15 of the Food Standards Australia New Zealand Act 1991, a Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers and the Authority must comply with those directions but a written statement of the reasons for giving the direction must be presented to each House of the Parliament within 15 sitting days of that House after the direction is given, and the Minister must consult with the Forum on Food Regulation and a direction given under subsection (1) is not a legislative instrument.

The remit of the Australia and New Zealand Ministerial Forum on Food Regulation and the Food Regulation Standing Committee is limited to food standards and policy guidelines that support food standards, as defined as food safety and handling, food labelling and advertising, food composition, including contaminants, residues, and additives.

Critically for the proposition that 'public health' includes population health, the current Terms of Reference for the FRSC clearly make the distinction between the core focus on food standards and other broader policy considerations by stating that the purpose covers coordinating policy advice, advising on strategic issues relating to the cooperative Food Regulation System, operating as a forum for collaboration, planning, evaluation, and information sharing, and importantly "ensuring a consistent approach to the implementation and enforcement of food standards."

### Component 2.1.3

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

Yes

Free text box, no character limit:

The IA has identified best practice models to promote greater inclusivity and respect for Indigenous perspectives while enriching the evidence base with valuable insights and contributing to a safer, more effective and culturally sensitive regulatory system.

We support the inclusion of reference recognition of indigenous culture and expertise, where those insights and contributions align and contribute with the existing Objectives of the Act to food standards.

Spirits & Cocktails Australia and the Australian Distillers Association recognise the disparity in socio-economic outcomes for First Nations Peoples in Australia, New Zealand and elsewhere. The Australian spirits industry is committed to responsible and legal consumption of alcohol in our communities, especially those in indigenous communities, and all regional and remote areas.

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

Not Answered

Free text box, no character limit:

### Component 2.1

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

Not Answered

Free text box, no character limit:

There is significant cause for concern that under the proposed inclusion – and prioritisation – of population health objectives, especially with the potential for a new agency, there could be significant public policy changes that bypass the Australian parliaments and the elected representatives of the Australian

people, namely:

1. Sugar Tax.
2. Restrictions and potentially bans on 'unhealthy' foods.
3. Environmental restrictions (George Institute 'dolphin-safe tuna' fishing restrictions).
4. Promotion of fair trading in food.

The Obesity Policy Coalition wants to extend the objectives of Public Health Medicine in the FSANZ Act to prioritise long-term public health issues, including dental health.

We would all agree that obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments but that doesn't mean that food standards regulation should be extended to cover all areas of health.

All of these will increase complexity and costs, that will be passed onto consumers.

## Component 2.2

### Component 2.2.1

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

Yes

Free text box, no character limit:

The industry acknowledges that if done correctly, and in consultation with stakeholders, FSANZ could develop a risk framework that could allow low-risk applications and proposals to undertake an expedited process for approval.

Spirits & Cocktails Australia and the Australian Distillers Association supports, in principle, the proposal that a non-legislated risk framework could drive the process in relation to applications and proposals, noting that a provision for urgency should be retained. Such a framework should ensure that low-risk modifications or new standards should expedite processes and allow these products into the market in a timely manner. Should this proposal be accepted, stakeholders should be consulted separately on the creation of an agreed risk framework, including around criteria, thresholds and processes, and any approaches to cost recovery that might flow from the changes to process.

According to the Australian Food and Grocery Council's submission, it has long been recognised that regulatory measures range from self-regulation through to black letter law based on the principles of risk assessment and proportionate regulatory responses. In the application of food regulation this was clearly recognised and reflected in the Blewett Review of food labelling where labelling issues were ranked in a risk hierarchy. Food safety issues are considered to be high risk requiring mandatory regulatory requirements whereas 'values issues' are more appropriately dealt with through self-regulatory measures. This was recommended by the Blewett Review reaffirmed most recently in the Policy Guideline on Food Labelling to Support Consumers to make Informed Healthy Food Choice.

A streamlined approach based on risk should be further developed including the use of Codes of Practice and guidelines where appropriate.

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

Free text box, no character limit:

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:

### 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?

Not Answered

Free text box, no character limit:

In principle, the Australian spirits industry sees value in streamlining current pathways to amend food standards, including making and accepting risk assessments from overseas jurisdictions.

Spirits & Cocktails Australia and the Australian Distillers Association see potential value reducing the administrative burden associated compiling the required evidence base to support a comprehensive risk assessment by FSANZ. We agree that FSANZ should explore how the burden could be minimised if FSANZ had the statutory ability to recognise and adopt international risk assessments.

Under the proposal the Act could be amended to enable FSANZ to formally recognise and adopt the assessment and determinations of 'overseas bodies' (with appropriate statutory controls). This could be limited to specific international bodies (such as Codex), specific assessments (such as chemical risks assessments undertaken by the Joint Food and Agricultural Organization of the United Nations / World Health Organization Expert Committee on Food Additives) or could be a more general power.

This approach could reduce duplication of effort where well-established and evidenced standards or assessments from other countries exists. It could also shorten the time and effort needed for reviews and approvals, currently a major barrier for market entry of new products.

This change would bring FSANZ into alignment with provisions in place in other regulatory areas (such as the Therapeutic Goods Administration), which would in turn simplify the regulatory experience for businesses.

However, the support of the Australian spirits industry is conditional on the only circumstance these could be used was to alleviate the administrative burden for industry to compile evidence.

Therefore, these processes should only be utilised at the request of or with the consent of industry as the regulated entity, and with a mechanism that would allow a regulated entity to seek ministerial review of an amendment. This would ensure that industry is satisfied with the experience of a food standards in an overseas jurisdiction, that problems have not emerged as a result of its adoption overseas, and that any relevant experience by industry in that overseas jurisdiction was not excluded in any FSANZ determination.

Overseas legislation or regulation cannot be used to overturn the FSANZ Act, or to impose policy, regulatory or legal conditions and obligations that are inconsistent or not specified within the existing legal and legislative instruments of the Australian food standards system.

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:

In developing standards FSANZ must consider: the best available scientific evidence, consistency with international standards, the desirability of an efficient and internationally competitive food industry; the promotion of fair trade and policy guidelines set by the Forum.

The Board of FSANZ approves all food standards.

The automatic recognition of select international standards immediately raises questions about how the standards would be selected but of greater concern is that automatic recognition could bypass the consultation process, avoiding scrutiny by government and industry. This truncated process could place enormous pressure on FSANZ and greatly increase risks associated with lack of oversight and input to review international standards for application in Australia and New Zealand. It is suggested that such developments internationally best be accounted for when periodic reviews are performed and thus subject to more contemplation and engagement than automatic adoption.

There are a number of submissions that raise concerns about this proposal and on balance, while there may be benefit in identifying and considering international best practice, there must be review and consultation before adoption in Australia or New Zealand.

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:

Spirits and Cocktails Australia offers potential Support for this proposal.

In developing standards FSANZ must consider: the best available scientific evidence, consistency with international standards, the desirability of an efficient and internationally competitive food industry; the promotion of fair trade and policy guidelines set by the Forum.

The Board of FSANZ approves all food standards.

The automatic recognition of select international standards raises questions about how the standards would be selected but of greater concern is that automatic recognition could bypass the consultation process, avoiding scrutiny by government and industry. A truncated process would place enormous pressure on FSANZ and greatly increase risks associated with lack of oversight and input to review international standards for application in Australia and New Zealand.

The Industry Advisory Group for the New Zealand Food Safety Science and research Centre state in their submission: "We have reservations about automatic adoption of selected overseas standards as the ability for stakeholders to comment on proposed new measures is important to maintaining relevant and appropriate measures for Australia and New Zealand. Additional pathway to bring very low risk products to market – as with the previous two proposals, it is not clear what an additional pathway might comprise but any approach that would expedite bringing products to market is supported. We also support industry self-substantiation of bringing low risk products to market."

According to the Brewers Association "Regarding automatic adoption of international standards, The Brewers Association agrees that FSANZ should generally be aligned with international standards. However, not all standards will be relevant to the Australia and New Zealand markets and some may be incomplete or more restrictive than current regulatory settings. Therefore, the Brewers Association's view is that international standards should only be adopted where they are no more restrictive than current regulatory settings and the adoption process allows for the specific diet and circumstances of

New Zealand and Australia to be taken into account. The Brewers Association however does have concern that adoption of any regulation without consultation is not a favourable approach, that input should be sought to those effected by any new regulation in any instance."

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?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia offers potential Support for this proposal.

Many of the regulatory systems revised had features that gave standard-setting bodies and regulators the flexibility to help bring new products to market efficiently and safely. For example, the US introduced a Generally Recognised as Safe (GRAS) pathway to expedite the introduction of very low risk food substances which are analogous to other products already approved and available.

In practice these arrangements can operate as a limited industry self-substantiation scheme.

The Australian spirits industry supports the current regulatory status quo for industry self-substantiation of low-risk ingredients and notified self-substantiation food health relationships. We have concerns about the introduction and inclusion of additives under an industry self-substantiation scheme if they are not being proposed by industry but instead imposed on industry.

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

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

Neutral

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

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

Not Answered

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

### 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:

Conditional Support:

Spirits and Cocktails Australia offers In-principle support for this proposal. The Australian spirits industry supports the use of risk-based approaches to determine the most appropriate pathways to a regulatory decision, in order to fast track low-risk, minor variations to food standards without compromising the objectives around food safety and an internationally competitive food industry.

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

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

Free text box, no character limit:

The responsibilities of the Food Minister's Meeting (FMM) - the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum) - are separate and distinct from the roles and responsibilities of departmental officials in the food standards system.

It is also unclear exactly which “departmental officials” are envisaged in the RIS as taking responsibility for decisions previously assigned to ministers.

There is also significant potential for Conflict-of-Interest when ministers and officials have clear accountabilities to each other in the food standards system, especially the FSANZ standard setting process.

Under the Operating Procedures, the Forum is supported by the Food Regulation Standing Committee (FRSC) which is responsible for coordinating and developing policy advice to the Forum and ensuring a nationally consistent approach to the implementation and enforcement of food standards. The FRSC has established the Implementation Subcommittee for Food Regulation (ISFR), which oversees a consistent approach to implementation and enforcement of food regulations and standards.

These sub-committees are subordinate to the Ministers with clear reporting lines and accountabilities to the elected ministers, however delegating any decisions to departmental officials, even assuming that they are serving on relevant committees could be an abrogation of ministerial responsibility, could lead to poor governance and potential conflicts-of-interest.

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

Neutral

Free text box, no character limit:

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

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

Free text box, no character limit:

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

#### 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?

Not Answered

Free text box, no character limit:

According to the IA, First Nations and Māori businesses cannot access food markets due to an uncertainty about how to demonstrate the safety of traditional foods, and this proposal would support more businesses to bring traditional foods to market.

First nations and maori cultures are preserved verbally. Guidelines could be established on how FSANZ should consider such evidence when developing or reviewing standards.

Further guidance material could be developed on how traditional foods can be assessed for safety. This could include clarification on when a traditional food would need to go through an alternative food process, for example a traditional food used in a non-traditional way. This would not impact the standard of safety to which foods are held.

The Australian spirits industry is a great promoter of native botanicals and ingredients in the production of innovative and award-winning products such as Finger Lime Gin and Ant Gin, and the industry will continue to collaborate with indigenous people in the development of products that celebrate and showcase their culture through traditional foods and ingredients.

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?

Yes

Free text box, no character limit:

The Australian native bushfood and botanicals industry is a significant and growing sector. In 2019-20, sales proceeds for this industry were estimated at \$152.5 million, and they are projected to grow to \$300 million by 2025.

Research by the University of Sydney has found that growing native bush foods could reverse environmental degradation and offer Australia better food security, according to new research, but concerns remain around commercial production.

There is an exciting opportunity for Australia's spirit industry to align indigenous culture and native products with ESG focussed products. Indigenous ingredients native to a particular location offer brands a distinctive and unique selling point.



Ultra-local botanicals have emerged as a signature for brands looking to be authentically rooted in a culture or geographic region. However, a number of brands are now working with local communities, too, in a bid to be more responsible in their sourcing practices.

Whether it's in limited-edition versions of global brands or niche, region-specific launches, using ingredients from a specific place can help brands to convey their brand story, or tap into and address larger consumer concerns such as sustainability, fair labour practices and the environment.

According to the NSW Government's NSW First Nations Business Sector a key barrier hindering growth and development of the native bushfoods and botanicals industry include unrealised opportunities to improve the marketing of native bushfoods, production methods and technologies; and the need to develop business models that can scale the industry in ways that sustain First Nations knowledge, culture, practices, and control .

The development of guidance materials would help the Australian spirits industry engage and collaborate with peak indigenous food advocacy bodies such as the First Nations Bushfood and Botanical Alliance Australia (FNBBA).

The growing international demand for authenticity and premiumisation extends to tourism that can drive significant growth in demand for cultural and natural tourism. The potential growth in the promotion of indigenous produce in Australian spirits presents a significant opportunity to develop First Nations businesses.

## 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:

With the review finding that FSANZ already has challenges in resourcing to meet its core purpose, proposed changes to expand FSANZ into areas other than food safety must be excluded from the reforms proposed to the Act.

According to the IA, resourcing constraints facing FSANZ – exacerbated by the statutory timeframes that FSANZ must meet for applications - make it difficult to progress reviews of standards in a timely manner and lead to their effective de-prioritisation in FSANZ's workplan.

FSANZ is primarily funded through an Australian Government appropriation and receives additional funding from the New Zealand Government, special projects and through cost recovery. Australian states and territories do not directly contribute to FSANZ's revenue stream. In recent years, FSANZ's operating budget has declined in real terms, which has forced FSANZ to prioritise its resources to process applications within statutory timeframes. Total FSANZ resourcing has reduced from AUD \$27 million in 2011-2012 to approximately AUD \$20 million in 2019-2020. This is despite Health Portfolio Government Appropriations having almost doubled over the same period – moving from approximately \$1 billion to approximately \$2 billion per annum, and also the fact that the number of projects undertaken annually by FSANZ has increased by approximately 56% over the same period. Current holistic reviews underway at FSANZ include infant formula and sports foods. We would note that 15 years have elapsed across both proposals without either being completed. We therefore question whether reviews always need to be 'holistic' and could instead be more narrowly focussed to ensure expedition, where appropriate to do so.

Spirits & Cocktails Australia and the Australian Distillers Association suggest that this is the wrong answer to the right question.

Firstly, these statements in the IA make it clear that FSANZ cannot afford to be saddled with additional requirements, especially when those extra activities are not aligned with the core objectives of the Act.

Secondly, consideration needs to be given to the demands given to FSANZ, and how the Authority balances the standard setting process with additional directions and requests from government and others.

Thirdly any unnecessary reviews of existing standards should not compromise the ability of the Authority to undertake the work for new and priority food standards.

Therefore, Spirits Australia offers conditional support for this proposal subject to further review and consultation.

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

Prefer not to respond / I don't know

Free text box, no character limit:

## 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:

Spirits & Cocktails Australia and the Australian Distillers Association agree that FSANZ should better use other regulatory instruments, such as guidelines or non-binding codes of practice, where such instruments would achieve the Authority's objectives.

We support FSANZ being able to recognise voluntary measures or codes of practice. Unlike legislative instruments, codes of practice should not be mandatory or enforceable, but can reflect an agreed approach that has the support or been adopted by the majority of industry including by market share. These codes can then serve as a demonstration of best practice by businesses to the market, but also give flexibility to small business to adopt these initiatives over time as they grow into more profitable entities.

These codes of practice should not be around the prevention of acute food borne illness, which require binding and mandatory instruments, but in areas like the provision of general, non-essential information to consumers, where the information may already be available on the majority of the products in market, and/or where consumers would otherwise have access to it, or know how to find it, in any case. FSANZ's adoption or creation of these codes of practice would signal their importance to stakeholders and give impetus to industry stakeholders to adopt them but allow flexibility for smaller businesses and new entrants to the market.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

## 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?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia supports In-Principle this proposal.

In order to make FSANZ more agile, resilient and fit-for-purpose, the draft RIS proposes streamlining FSANZ's governance and operations through amendments to the composition and selection of the FSANZ Board.

We note the proposal to create a more skills-based Board, a consolidation of the Board to eight people, and a move to virtual Board meetings. ABA does not have a strong view on these proposals; however, in any recalibration of the FSANZ Board, the Australian spirits industry would like to see: An increase in representation in the Board of members with direct experience in the food industry. As industry is the regulated entity, we believe the Board should have a number of members (we suggest 50%) who can appreciate the time, cost and complexity of food safety regulation on business, including small business, and that this experience would help to ensure that regulatory decisions are focused on the least burden to industry required to achieve objectives; Ministers remain responsible for the final sign off on all Board appointments, as ministers have the duty to consider the necessary balance and skills-set of the Board necessary to ensure FSANZ's meets its objectives, taking into consideration whole-of-government perspectives.

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

Not Answered

Free text box, no character limit:

The Australian spirits industry would like to see an increase in representation in the Board of members with direct experience in the food industry. As industry is the regulated entity, we believe the Board should have a number of members (we suggest 50%) who can appreciate the time, cost and complexity of food safety regulation on business, including small business, and that this experience would help to ensure that regulatory decisions are focused on the least burden to industry required to achieve objectives.

We note that Ministers remain responsible for the final sign off on all Board appointments, as ministers have the duty to consider the necessary balance and skills-set of the Board necessary to ensure FSANZ's meets its objectives, taking into consideration whole-of-government perspectives.

### Component 2.3.2

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

Negative

Free text box, no character limit:

The Australian spirits industry is concerned by this proposal, which is a response to long-term decreases in funding in real terms that removes a fee-for-service activity.

Annual reports from FSANZ show that the cost recovered is about 5% of total revenue but that this provides critical sustenance to product development and innovation pathways. FSANZ own research highlight the importance of this to ensure a competitive food industry that remains globally competitive. Deleting this pathway could have serious short-, medium- and long-term implications for the viability of Australian Food manufacturing. We would note there has been recent and current government effort directed at ensuring the ongoing global competitiveness and productivity of the manufacturing sector. To remove this would be counterproductive to those initiatives.

Spirits & Cocktails Australia and the Australian Distillers Association remain unsure of the evidence that current pathway has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions. Therefore, we do not see the rationale or the imperative to remove the expedited approvals pathway to address workload prioritisation.

The IA states that Section 146(6)(b) could be removed to revoke the option for applications to be expedited (which is subject to a fee).

The IA concedes that "this means that FSANZ would in fact forego a source of revenue" but is justified because it would mean it would not be bound to commence assessment of paid applications as quickly, noting that the Act requires applications to be assessed within 12 months for a major procedure (nine months for a general or high level health claim or three months for a minor procedure), and this timeframe commences at the time the fee is paid for paid applications.

Of even greater concern is the statement that:

"This change would remove an avenue by which businesses can currently gain greater certainty as to when they can launch products and plan for the future."

The Australian spirits industry is concerned about the removal of a pathway that supports greater certainty to promote innovation and investment.

We also do not agree that this needed to "potentially release capacity for FSANZ to focus its resources on other initiatives, such as proposals and project work."

Many of the regulatory systems reviewed had features that gave standard-setting bodies and regulators the flexibility to help bring new products to market efficiently and safely. For example, the US introduced a Generally Recognised as Safe (GRAS) pathway to expedite the introduction of very low risk food substances which are analogous to other products already approved and available. In practice these arrangements can operate as a limited industry self-substantiation scheme.

The Australian spirits industry supports the current regulatory status quo for industry self-substantiation of low-risk ingredients and notified self-substantiation food health relationships. We have concerns about the introduction and inclusion of additives under an industry self-substantiation scheme if they are not being proposed by industry but instead imposed on industry.

### 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:

Spirits and Cocktails Australia strongly opposes this proposal.

According to the IA a levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia (or those generating over a certain threshold of revenue per year). This could be appropriate as standard-setting and other activities contribute to maintaining high standards of food safety and quality, reputation of the Australian and New Zealand food system and marketability of food products through a combination of rigorous pre-approvals and post-market support such as surveillance and food recall coordination.

Activities that an industry levy could support which would have direct industry-wide benefits include the production of guidance materials to assist with compliance, international harmonisation work to adopt and align with international standards expanding trade opportunities, contribute to supporting more timely consideration of standard reviews, enhanced monitoring of the food supply to identify trends and reporting on the state of the food supply. A levy could also support FSANZ to enhance and streamline its delivery of services to the industry, allowing it to undertake projects such as making the Food Standards Code more user friendly and accessible.

Should such a levy be implemented, FSANZ's existing (and any additional industry cost recovery mechanisms proposed below) industry cost recovery mechanisms – namely, the cost to expedite applications or to capture an exclusive commercial benefit – could be discontinued.

We object to this proposal being putting forward in the IA as it was not put forward for consideration earlier.

This proposal was not raised in the Draft Regulatory Impact Statement. The reference in the RIS was limited to a levy for FSANZ becoming an engine of data and intelligence and this proposal was not included in the IA but the levy has been.

There was no reference in the RIS questions to an industry wide levy.

There are no submissions that propose or recommend an industry-wide levy.

The Terms of Reference for the Review ensuring any proposed changes to the regulatory system imposes the least burden on business to achieve the stated objectives of the regulation and specific consideration is given to the impact on small businesses and only “Cost recovery models for industry-initiated work” with an industry wide levy clearly extending beyond this limitation, ruling it clearly out of scope.

The Impact Analysis specifically refers to the wine industry levy as an example of how an industry levy could be applied to the food and beverages sector to fund FSANZ. The Australian spirits industry is extremely concerned about the inclusion of an industry and the reference to the wine industry levy as a potential model for FSANZ.

Case study (as set out in the Government IA): The Australian Grape and Wine Authority (AGWA) Wine Grapes Levy. It is highly inappropriate to refer to the wine industry levy as a reference for a FSANZ industry levy. The Australian and New Zealand wine industries are part of the FSANZ food (and beverage) regulatory system, but the Wine Grapes Levy does not, and has never, applied to the funding of FSANZ.

If a new industry-wide levy was introduced, then the wine industry would be paying two levies.

The wine grapes levy was first introduced 22 March 1929 and both Wine Australia and Plant Health Australia (PHA) are responsible for the expenditure of the wine grapes levy. The wine grapes levy comprises Emergency Plant Pest Response (EPPR), marketing, PHA membership and research and development.

Spirits and cocktails Australia and the Australian Distillers Association are unclear how a Wine Grape Levy could be applied to the funding of FSANZ when the Australian spirits industry does not have an equivalent to Plant Health Australia.

It is also unclear if this proposal is recommending the establishment of research and marketing campaigns being funding by the FSANZ levy, or if FSANZ would become responsible for international marketing of the food industry, let alone how any of the functions supported by the Wine Grapes Levy would be consistent with the FSANZ Act, let alone the food regulatory system, or how they are within the scope of the Terms of Reference for the review.

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:

Spirits and Cocktails Australia strongly opposes this proposal and states that an industry levy would not be fair, consistent or feasible to administer, and that it is only being put forward as a justification to support the unnecessary expansion of FSANZ into non-core activities such as population health and that the costs for industry and consumers have not been adequately accounted for.

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:

Spirits and Cocktails Australia strongly opposes this proposal and states that an industry levy would not be fair, consistent or feasible to administer, and that it is only being put forward as a justification to support the unnecessary expansion of FSANZ into non-core activities such as population health and that the costs for industry and consumers have not been adequately accounted for.

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

Negative

Free text box, no character limit:

We note that based on the potential for additional costs of operation and administration for FSANZ to divert focus and resources from the core activities and objectives of the Act, the Victorian Government is proposing that if a fee-for-service model is established for this it should take an equitable approach such as a tiered fee structure.

This fee-for-service proposal put forward by Victoria was a specific cost recovery mechanism and not a general charging model for all applications.

We highlight the suggestion that a charge-based access be introduced, and we wonder how many of those who submitted in favour of the proposal would continue to support it if they knew they would have to pay for it?

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:

#### 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?

No

Free text box, no character limit:

According to the RIS, jurisdictions undertake significant work to hone a risk-based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

That seems a fairly innocuous activity, however the RIS goes further.

The RIS highlights that FSANZ currently has the statutory remit to coordinate food recalls in Australia, but only at the request of States and Territories. Stronger collaborations between FSANZ and the jurisdictions (including New Zealand) will facilitate more timely identification of risks and enable swift responses to better protect the public and minimise reputational damage to industry.

According to the IA, FSANZ currently works with the jurisdictional enforcement agencies in Australia to coordinate an average of 90 recalls per year, primarily to address undeclared allergens and microbial contamination. This incurs an average annual cost to FSANZ of \$1,190,000.

The IA proposes that FSANZ could charge Australian States and Territories a levy, based on the number of food businesses or the average number of food recalls that are required in that jurisdiction.

The Australian spirits industry is comfortable with the proposal that FSANZ has a statutory function to, either in consultation with states and territories, or on its own initiative, the ability to coordinate action and respond to food incidents and food recalls. We would support this as a shared power with states and territories, and not to be introduced to replace the power of states and territories.

Spirits & Cocktails Australia and the Australian Distillers Association does not support FSANZ's remit to be expanded into the area of enforcement, either with specific enforcement functions for select food standards, or in the role as a single, binational regulator. We do not believe the draft RIS has demonstrated a problem with the current enforcement responsibility framework, either at the state and territory level, or the federal regulators, such as the ACCC, who enforce against deceptive and misleading claims by companies including on issues of food safety.

We believe the proper role for FSANZ is to undertake more education for industry on how to adhere to new food standards through non-binding guidance notes or other advice, and that enforcement agencies could either contribute to these notes or use them as a basis for enforcement-related decisions.

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

A number of New Zealand submissions were not supportive of FSANZ coordinating recalls primarily because New Zealand already has a system involving a single national regulator for recalls, with Wakatu Incorporation warning that "There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ with respect to New Zealand.

According to Queensland Government's Food Safety Standards and Regulation Unit, the option to permit FSANZ to coordinate food incident and recall responses on its own initiative may present a negative outcome for food safety enforcement agencies such as Queensland Health and Safe Food Production Queensland.

It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

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:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

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?

No

Free text box, no character limit:

The IA proposes that FSANZ could implement a cost recovery mechanism for the FMM to request additional proposals added to FSANZ's workplan, where these exceed the number that can be normally absorbed and agreed in the joint agenda-setting activities proposed in Component 2.4 in Section 5.2.4.

This can support FSANZ to dedicate resources to additional proposals without interrupting other initiatives on its workplan.

This proposal introduces a state and territory fee-for-service model that could add additional workload on FSANZ that could divert it away from core functions and activities.

We note that according to the IA, the joint agenda-setting with the jurisdictions would remove or abandon lower priority items to focus on other work such as the National Preventative Health Plan 2021-2030.

This is exactly the sort of diversion of FSANZ that was highlighted in the earlier sections on public health and not population health, with preventative health a core priority of population health and not food standards.

The IA also concedes that the jurisdictions could fund FSANZ to underate 'project work' on non-core issues such as "emerging trends in food".

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

Negative

Free text box, no character limit:

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

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It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

How would this need to be implemented to be successful?

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

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

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

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

Negative

Free text box, no character limit:

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

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It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

How would this need to be implemented to be successful?

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

## Component 2.3

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

Not Answered

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 note that according to the IA, the joint agenda-setting with the jurisdictions would remove or abandon lower priority items to focus on other work such as the National Preventative Health Plan 2021-2030.

This is exactly the sort of diversion of FSANZ focus and resourcing that was highlighted in the earlier sections on public health and not population health, with preventative health a core priority of population health and not food standards.

The IA also concedes that the jurisdictions could fund FSANZ to underate 'project work' on non-core issues such as "emerging trends in food".

Regional Public Health New Zealand, University of Auckland Faculty of Medicine and Health Sciences Public Health Nutrition Group and other population health advocates make it clear that a joint agenda setting meeting would resource and prioritise work that protects public health, long-term health, and diet-related preventable disease in particular.

As the Brewers Association highlights in its submission: "The Brewers Association does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ."

New Zealand Wine does not support this proposal: "NZW does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ. In NZW's view, this would further compromise the already threatened independence of FSANZ."

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

Free text box, no character limit:

Spirits and Cocktails Australia recognises the legal primacy of the Act and the independence of FSANZ and does not support this proposal.

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

Free text box, no character limit:

Spirits and Cocktails Australia recognises the legal primacy of the Act and the independence of FSANZ and does not support this proposal.

## 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:

Food policies are the guiding principles for addressing significant food issues and Food Standards Australia New Zealand (FSANZ) must consider the policy guidelines when developing standards.

Food Regulation Standing Committee (FRSC) supports the Food Ministers' Meeting by coordinating and providing policy advice and ensuring a consistent approach to implementing food standards.

Clearly the remit of the Forum and the FRSC is limited to food standards and policy guidelines that support food standards, as defined as food safety and handling, food labelling and advertising, food composition, including contaminants, residues, and additives.

Critically for the proposition that 'public health' includes population health, the Terms of Reference for the FRSC clearly make the distinction between the core focus on food standards and other broader policy considerations by stating that the purpose covers coordinating policy advice, advising on strategic issues relating to the cooperative Food Regulation System, operating as a forum for collaboration, planning, evaluation, and information sharing, and importantly: "ensuring a consistent approach to the implementation and enforcement of food standards."

FSANZ currently attends Food Regulation Standing Committee (FRSC) policy working groups to provide early advice on matters that could progress to regulation but the industry earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.

The New Zealand Beverages Council is supportive of FSANZ's earlier involvement with FRSC to understand responsibilities and minimise duplication of efforts, as they believe this could provide stakeholders with greater transparency of policy decision-making process and technical expertise that FSANZ provides to the FRSC.

The Brewers Association submit that earlier stages of the FSANZ application/approval process are where efficiencies may be gained. Obtaining Ministerial approval does not significantly weigh on FSANZ's resources, nor does it dramatically slow down decision making.

The Australian spirits industry believes the role and Terms of Reference for the Food Regulation Standing Committee (FRSC) should also be reviewed and brought into line with the Review of COAG Councils and Ministerial Forums.

Under the FRSC ToRs: As part of its overarching purpose FRSC:

- o manages projects and resource to deliver on agreed Forum and FRSC priorities.
- o sets priorities and undertakes annual planning for the whole of System.
- o monitors and measures performance of the System.
- o conducts environmental scanning.
- o directs intelligence gathering; and
- o provides advice to inform strategic planning for the System.

The industry believes the current operations of the FRSC simply create an additional layer of administration, and that these functions should be the responsibility either of the Food Ministers' Meeting, or of FSANZ itself. We believe the principles of the COAG review reflected a desire to abolish unnecessary administration, and that the Department can provide meeting support while Ministers set priorities (including the agenda, another COAG reform principle) and monitors performance, and FSANZ is responsible for the other functions.

The Brewers Association does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ.

New Zealand Wine does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ. In NZW's view, this would further compromise the already threatened independence of FSANZ. The statutory division between policy development and standards setting under the FSANZ Act is appropriate.

The New Zealand Food and Grocery Council also warns about the unnecessary meeting between FSANZ and the Food Ministers, especially "since Ministers have political affiliations and membership regularly changes, it is likely that their interests in the FSANZ work programme could change also." We believe that the priorities and objectives are already set out in the Act.

As an example of the risks associated with setting agendas and direction to FSANZ Dieticians Australia has proposed that a periodic joint agenda-setting meeting between FSANZ and the Food Ministers could be used to promote population health objectives and that preventable diet-related disease, should consistently be prioritised.



The use of FSANZ as a trojan horse by population health advocates in a joint meeting of FSANZ and the Food Ministers' Meeting, is exactly why the Australian spirits industry is concerned about the expansion of the 'public health' and safety focus to include non-food standards health and social objectives.

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?

No

Free text box, no character limit:

It would be fair to say that there was significant opposition and concern about FSANZ becoming the "guardian" of key food safety data.

In its submission the Victorian Government did not support Expanding FSANZ's Food Safety Role into Coordinating Food Safety Research, acting as a Guardian of Food Safety Databases and Collating and Creating Consumer-Facing Food Safety Education Materials, stating that: "FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient its focus to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

The NZFGC is cautious about positioning FSANZ to be the guardian of key food safety databases that includes New Zealand but is supportive for Australian food safety. It is unclear to what extent this would extend between the Australia and New Zealand as both countries maintain composition databases for example.

The Food Governance Node submission states that: "We do not support this expansion of FSANZ's role and responsibilities. FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

Industry Advisory Group for the New Zealand Food Safety Science and research Centre stated in its submission that "IAG is cautious about positioning FSANZ to be the guardian of key food safety databases." Even Wakatu Incorporation does not consider that FSANZ should be positioned as the guardian of data that relates to New Zealand.

Regional Public Health New Zealand does not support expanding FSANZ's food safety role to include coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials.

Spirits & Cocktails Australia and the Australian Distillers Association also oppose the specific application of this proposal to Australia only and any reforms to FSANZ that create anomalies or unnecessary differences between Australia and New Zealand.

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

Free text box, no character limit:

### Component 2.4.4

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

Not Answered

Free text box, no character limit:

The Australian spirits industry believes it is important for FSANZ to focus on building strategic relationships with comparable international regulators both to share assessments or standards but also to work together with these international bodies to develop standards which are internationally relevant, particularly in our export markets.

Spirits & Cocktails Australia and the Australian Distillers Association is unsure why this needs to be addressed through the RIS and review process given FSANZ already has established working relationships with Health Canada and European Food Safety Authority (EFSA).

The support is conditional on this collaboration not being manipulated to import objectives, conditions, regulations, or other policy imposts from other jurisdictions that do not align with the current food safety standards priorities and objectives of FSANZ.

For example, the Red Meat Advisory Council (RMAC) cautions that this proposal must not lead to unintended (or intended) consequences that are

detrimental to industry and consumers: "However, in light of recent FSANZ partnerships with anti-meat and anti-farmer activist groups the Australian red meat and livestock industry is concerned with the effective decision making which may occur if delegated from a Ministerial level. Before any decision delegation, FSANZ needs to undertake a review into how partnerships with extremist activist groups were cultivated to ensure the agency's objectivity can be reinstated and confidence provided to industry and consumers."

We note that the Dieticians state in their submission that this should not result in automatic adoption of overseas assessments or regulations.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

#### Component 2.4.5

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

No

Free text box, no character limit:

The Australian spirits industry remains concerned about attempts to redefine FSANZ's responsibilities away from its original intention of food safety to include both wide-ranging preventative health as well as regulating matters of farm and food sustainability.

We believe that there is significant risk that a Statement of Intent will be used to include a wide preventive health perspective, rather than the original intention of being related directly to providing public health benefits from a safe food regulatory system that protects human life through the provision of safe foods for consumption.

Spirits & Cocktails Australia and the Australian Distillers Association submit that there is already Overarching Strategic Statement for the food regulatory system.

The purpose of this document is to provide a strategic context for the Australian and New Zealand food regulatory system.

It states that the primary goal of the regulatory system is to protect the health and safety of consumers of food – in other words, to protect Australians and New Zealanders from preventable health risks associated with the consumption of food.

This means: helping to prevent people becoming sick or dying as the result of the consumption of unsafe food; and providing consumers with information so that they can choose appropriate food and remain healthy over time.

We see no urgent need or deficiencies in the current Overarching Strategic Statement that would warrant the duplication through the introduction of a new Statement of Intent. It is also unclear what the Courts would make of such a Statement.

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:

Spirits & Cocktails Australia and the Australian Distillers Association agree that FSANZ should better use other regulatory instruments, such as guidelines or non-binding codes of practice, where such instruments would achieve the Authority's objectives.

We support FSANZ being able to recognise voluntary measures or codes of practice. Unlike legislative instruments, codes of practice should not be mandatory or enforceable, but can reflect an agreed approach that has the support or been adopted by the majority of industry including by market share. These codes can then serve as a demonstration of best practice by businesses to the market, but also give flexibility to small business to adopt these initiatives over time as they grow into more profitable entities.

These codes of practice should not be around the prevention of acute food borne illness, which require binding and mandatory instruments, but in areas like the provision of general, non-essential information to consumers, where the information may already be available on the majority of the products in market, and/or where consumers would otherwise have access to it, or know how to find it, in any case. FSANZ's adoption or creation of these codes of practice would signal their importance to stakeholders and give impetus to industry stakeholders to adopt them but allow flexibility for smaller businesses and new entrants to the market.

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?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia agrees that FSANZ should take into account the cultural considerations First Nations and Māori Peoples in the food standards process and that the development of appropriate guidelines following the review and amendments to the Act.

#### Component 2.4.7

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

No

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association do not believe that FSANZ should have a stand-alone statutory role in relation to other issues such as food fraud and crime. We believe that the existing ACCC provisions adequately cover and there is insufficient evidence or rationale for food fraud and food crime being distinct from other fraud and crime currently covered by the legal systems of the Commonwealth, State, and Territory governments.

FSANZ can already make standards that could apply to food fraud and crime and any additional obligations and responsibilities on FSANZ for enforcement would divert focus and resources and potentially conflict and duplicate other existing legal oversights.

According to the RIS currently, jurisdictions undertake significant work to hone a risk- based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

The RIS highlights that FSANZ currently has the statutory remit to coordinate food recalls in Australia, but only at the request of States and Territories. Stronger collaborations between FSANZ and the jurisdictions (including New Zealand) will facilitate more timely identification of risks and enable swift responses to better protect the public and minimise reputational damage to industry.

The IA suggests that FSANZ could collaborate more regularly with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response. Currently, jurisdictions undertake significant work to hone a risk-based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ already shares intelligence with the jurisdictions to support this. To expand this collaboration, FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

Spirits & Cocktails Australia and the Australian Distillers Association does not support FSANZ's remit to be expanded into the area of enforcement, either with specific enforcement functions for select food standards, or in the role as a single, binational regulator. We do not believe the draft RIS has demonstrated a problem with the current enforcement responsibility framework, either at the state and territory level, or the federal regulators, such as the ACCC, who enforce against deceptive and misleading claims by companies including on issues of food safety. We believe the proper role for FSANZ is to undertake more education for industry on how to adhere to new food standards through non-binding guidance notes or other advice, and that enforcement agencies could either contribute to these notes or use them as a basis for enforcement-related decisions.

#### Component 2.4

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

Not Answered

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#### 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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been "relatively few amendments in that time". We also feel that the methodology is overly binary between the options of status quo option or significant

reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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

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There is significant evidence that consumers are shifting their spending toward products that demonstrate genuine ESG-related benefits.

The Australian native bushfood and botanicals industry is a significant and growing sector. In 2019-20, sales proceeds for this industry were estimated at \$152.5 million, and they are projected to grow to \$300 million by 2025.

Research by the University of Sydney has found that growing native bush foods could reverse environmental degradation and offer Australia better food security, according to new research, but concerns remain around commercial production.

There is an exciting opportunity for Australia's spirit industry to align indigenous culture and native products with ESG focussed products. Indigenous ingredients native to a particular location offer brands a distinctive and unique selling point.

Ultra-local botanicals have emerged as a signature for brands looking to be authentically rooted in a culture or geographic region. However, a number of brands are now working with local communities, too, in a bid to be more responsible in their sourcing practices.

Whether it's in limited-edition versions of global brands or niche, region-specific launches, using ingredients from a specific place can help brands to convey their brand story, or tap into and address larger consumer concerns such as sustainability, fair labour practices and the environment.

According to the NSW Government's NSW First Nations Business Sector a key barrier hindering growth and development of the native bushfoods and botanicals industry include unrealised opportunities to improve the marketing of native bushfoods, production methods and technologies; and the need to develop business models that can scale the industry in ways that sustain First Nations knowledge, culture, practices, and control .

Improved coordination would help the Australian spirits industry engage and collaborate with peak indigenous food advocacy bodies such as the First Nations Bushfood and Botanical Alliance Australia (FNBBA).

The NSW First Nations Business Sector – A return to prosperity used the use of pearl oyster flesh as a key ingredient in a new type of gin as an example of a recent innovative applications of native botanicals.

The growing international demand for authenticity and premiumisation extends to tourism that can drive significant growth in demand for cultural and natural tourism. The potential growth in the promotion of indigenous produce in Australian spirits presents a significant opportunity to develop First Nations businesses.

The increased use of indigenous and native ingredients by the Australian spirits industry presents an important opportunity to promote and produce in a way that is culturally respectful, environmentally and economically sustainable and culturally authentic.

The Australian Trade and Investment Commission notes that indigenous foods thrive in our visitor economy, with a priority on developing unique and high-quality products, including Aboriginal and Torres Strait Islander experiences. Presenting native foods in unique ways, generates unique visitor experiences.

The Queensland Government has supported Beachtree Distilling Co to assess new production methodologies, source and screen raw materials, and develop a new range of products with native food ingredients. This will enable the company to process these products, scale up manufacturing and diversify their product offering.

The growth of the cultural and natural tourism industry presents an opportunity to grow a resilient workforce on Country. Jobs in this sector create more than just employment opportunities: they allow young people to locate themselves where they can remain connected to kin and culture, even as they transition from formal education to the labour market.

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?

Yes

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have

been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

## 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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

## 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 Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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

Prefer not to respond / I don't know

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### Section 8 - Best option and implementation (Delivery risks)

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

No

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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

No

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

## 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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

## Other comments

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

Yes

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit for purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries.

In providing a submission regarding the Review of The Food Standards Australia New Zealand Act 1991 - Draft Impact Analysis 2024, Spirits & Cocktails Australia and the Australian Distillers Association firstly affirm support the overarching objective of the Review and the efforts to modernise and future-proof the food regulatory system.

While we agree that the Act has been in place for over 30 years, we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”.

For instance, the original National Food Authority Act 1991 was amended to become the current Food Safety Standards Australia New Zealand Act (FSANZ).

In Section 2.1.3 The FSANZ Act 1991, the IA lists out the multiple amendments to the Act, including the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015, the Food Standards Australia New Zealand Amendment Bill 2010, the Australia New Zealand Food Authority Amendment Bill 1999, and the Australia New Zealand Food Authority Amendment Bill (No. 2) 1997.

Throughout this time, the Australian Parliament in consultation with the community and industry, have on numerous occasions sought to improve and update the regulation of Australian and New Zealand food safety standards.

That is why Spirits & Cocktails Australia and the Australian Distillers Association support the current the review into the Food Standards Australia New Zealand (FSANZ) Act, and its Terms of Reference (ToR) which explicitly recognise the importance of the food industry to regional communities and the broader economies of Australia and New Zealand.

There are elements of the IA that warrant inclusion in FSANZ reforms, but other elements require such significant change, reflect missed opportunities, or present significant risks, that cannot be supported in their current form.

We support sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety. In particular, creating an agile system that is responsive to industry and consumer needs in an ever-innovative sector is crucial to protecting our enviable global reputation for food safety.

There are, however, clearly elements of the IA and some specific recommendations that represent an overreach as to the role, responsibility and functioning of a food safety authority such as FSANZ.

We submit that there are widespread and deep concerns amongst stakeholders about the drift and scope creep into non-core areas that should be removed and not included in the Act, namely the proposals that cover:

1. FSANZ expansion into population health.
2. Removal of Ministerial decision-making powers

We note that the IA has dropped the contentious proposal in the RIS for FSANZ responsibilities to expand into farm and food sustainability. This proposal is yet another example of scope creep and expansion into areas that would divert resources and distract focus from the core purpose and responsibilities of a safe food standards system.

The industry is concerned about some of the issues raised during the consultation process, including options considered in the RIS, as well as some of the recommendations that are being proposed in the IA. This is especially so with the sudden introduction of an industry-wide levy similar to the wine industry levy.

## 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.

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