

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 18:30:31

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Carolyn Elizabeth Lister

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
New Zealand Institute for Plant and Food Research Limited

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

New Zealand

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:

We have faced several issues, particularly in relation to feedback from the clients we work with, especially in the areas of nutrition and health claims and novel foods. These include:

- It takes a long time to change/implement new regulations which can slow innovation. Importance of driving innovation but not at the risk of loss of trust in the food system/products.
- Challenges around what constitutes a novel food or traditional food. Plus, lack of recognition of Indigenous foods and knowledge.
- Enforcement inconsistencies between NZ and different Australian states, including 'acceptance' of self-substantiation dossiers (we know FSANZ doesn't approve these, but some claims still appear on the register from Australia that don't seem robust and wouldn't have met the criteria imposed by MPI in New Zealand).
- Challenges with interpretation of the legislation, especially by SMEs. There are lots of 'grey' areas and confusion in food industry (they often lack science background and there are differences in interpretation of risk – a company may estimate something as 'low risk' that FSANZ would class as high risk due to no clearly communicated risk framework at present). There are personal and cultural reasons why people view safety differently and this needs to be recognised and covered.
- Inefficiencies – why replicate things where already other international regulations/approvals that could be used? Companies we work with are

sometimes going into multiple international markets and causes extra work meeting diverse needs where could be more streamlined.

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

Free text box, no character limit:

The Impact Analysis document cites several international treaties (e.g. UN declaration of independence of Indigenous people). We believe it would be important to include Nagoya protocol (which talks about genetic resources so would be relevant) and Te Tiriti o Waitangi among these for consideration if language is to be modern and consistent with current context. Noting although Australia and New Zealand are not signatories to Nagoya it still has relevance.

Also there needs to be consideration of “data sovereignty” and “appropriate protection measures” around some of the proposed activities. See Te Kaahui Raraunga (Māori Data governance Model) released in May 2023 (<https://www.kahuiraraunga.io/maoridatagovernance>), e.g. once information about traditional foods are assessed for safety, how will that information be protected, stored and made accessible to ensure appropriate use (these processes need to be thought of in tandem with appropriate IP arrangements)? It would be not always be appropriate to open this up to any business (e.g. due to risk of misappropriation of indigenous resources or knowledge and unfair benefit sharing). Other legislative areas have dealt with this by developing controlled access databases of information or developing committee to approve uses (e.g. NZ Plant Variety Rights Act changes). The USDA also has a system for redacting confidential business information from the public versions of safety assessments. Something similar could be implemented for cultural knowledge.

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):

We strongly advocate the inclusion of preventable diet-related disease as well as food safety concerns (the later often being the main focus for many in the industry). As stated on page 49: ‘all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short-term or long-term, including preventable diet-related disease, illness and disability as well as acute food safety concerns.’ Need better integration and consideration of the whole food system and the players in it (past ‘Road Shows’ were valuable for communication and engagement/discussion).

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 wider perspectives of health, including long term considerations, gels with the Māori world view but also allows a more structured assessment and ensures full consideration of factors considered. It should also allow greater transparency.

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

Positive

Additional comments (optional):

This should help avoid/minimise the ‘grey areas’ currently faced with interpretation of the legislation. By encompassing more than just ‘safety’ it should also help with trust and belief in food system (there is currently a lot of scepticism by the consumer – for most the ‘safety’ of food isn’t really questioned, and trust is very high, but the healthiness is questioned a lot more).

Component 2.1.2

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

Yes

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

Free text box, no character limit:

In SMEs staff are undertaking multiple roles and do not always have time to understand all the regulations fully and rely on guidance that is often currently lacking.

In some of our work with industry at present there is a lot of confusion and grey areas with opportunity for different interpretations resulting in confusion and non-compliance. The legislation is fragmented with lots of information in various places and not necessarily well connected (users need a high degree of knowledge to know where to find everything and therefore can 'miss' critical information or not be able to find it).

Users need to be able to see the bigger picture and understand reasoning behind the legislation to appropriately use it. Finding ways to for better communication will be hugely beneficial.

Roadshows and forums good and ensuring digital communication, such as webinars.

Provision of lists of experts and even internal FSANZ/enforcement agency contacts that people can go to easily.

There is potential value in case studies, e.g. we have done this recently for the Horticulture NZ Action Plan where we have written a Zespri case study around health claims.

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:

We need genuine intent and engagement in this space - don't want tokenism.

From a Plant & Food Research perspective, new provisions of language change in the Act would better support FSANZ to recognise Indigenous culture and expertise, given our PFR Māori strategy TONO that values Te Tiriti o Waitangi through embracing Te Tiriti-based partnership approaches with Māori. We have strong interests in building robust and meaningful relationships with Māori, as well as becoming trusted research partners with Māori within the food and beverage industry.

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

Yes

Free text box, no character limit:

In general, the provision of Te Reo Māori language, where appropriate, ought to be included in the Act that recognises Māori culture and expertise connected to the food and beverage industry. The exact language to be used ought to be consulted with Māori.

Component 2.1

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

Yes

Free text box, no character limit:

Some things to consider include: traditional use claims, provenance, Access & Benefit Sharing (look at international initiatives around capturing traditional knowledge such as digital library. e.g. Indian transcripts), Māori data, safety at a holistic level as considered by Māori.

Caveat = if you are writing down, don't want it to be misused and risk of exploitation.

Considerations for provision made for anecdotal evidence.

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:

Importance of capturing not only risk at a population level but also to specific population groups, e.g. Māori due to specific genes carried.

Could mean low risk products pass through the system more easily and this then takes pressure off the whole system. Low risk is often self-regulated

with regulator only having an overview role. Own testing and uploaded onto system. Reduces cost of site visits, etc.
High risk more challenging and needs appropriate measures and correct consultation.

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

Free text box, no character limit:

Table 10 is good.

Needs to be appropriate and in some cases product-based.

Importance of science/evidence base.

Correct consultants should be involved where necessary.

Self-regulation good for low risk within certain parameters (assuming appropriate understanding in industry but that can be achieved through better communication and support).

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

Not Answered

Free text box, no character limit:

Provides an easier path for new research and when collaborating with companies taking product concepts to market.

Cost saving.

Component 2.2.2

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

Yes

Free text box, no character limit:

Yes, as long as from a robust list of well accepted regulators (e.g. EFSA, FDA, Health Canada, etc). Would be much easier for companies we are working with who work across multiple markets.

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

Yes

Free text box, no character limit:

Time and cost saving.

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:

It makes logical sense, although depends on the definition of a very low risk product (what may be low risk overall for population may be high risk for small subset so it will be important to have some clear way to flag this if necessary).

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

Yes

Free text box, no character limit:

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

Positive

Free text box, no character limit:

Faster change and therefore quicker path for innovation to deliver new products to market.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

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

Yes

Free text box, no character limit:

Opportunity for FSANZ to use enforcement agencies (the ones dealing with industry all the time) - providing feedback to make things more efficient and flexible. They are seeing the grey areas.

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

Free text box, no character limit:

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

Positive

Free text box, no character limit:

Make it easier working with our food industry clients and less work having to educate them on the basics and remedy problems where they haven't understood they were non-compliant.

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

Free text box, no character limit:

Skills-based cross-community representation.
Science understanding where appropriate.
Indigenous input where relevant.
Important to understand the science behind the risk.

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?

Yes

Free text box, no character limit:

A key gap may be written evidence and improved access to traditional knowledge. There are issues around acceptance of traditional use food claims due to the nature of oral language traditions rather than written, with some markets excluding "traditional use" evidence entirely. But the process of capturing this if not conducted with careful consideration, could be viewed as 'repeat colonisation'. Some insights may be gained by looking into initiatives such as the Traditional Knowledge Digital Library (TKDL). They have looked to improving evidence and access to of traditional knowledge by converting Indian transcription into international languages and available on the public domain, therefore making prior art more accessible. FSANZ talks about speaking with Australia IP and IPONZ about how to ensure IP stays with traditional owners and benefit sharing arrangements and looking at certification schemes – they could look more broadly for exemplars or experts here. The currently legal system may not provide solutions. Recognize sui generis legal approaches are necessary. Protection of knowledge and what people are willing to share (risk of exploitation), and who has the rights to approve that. Products could be on a list but does that mean anyone can then go and use (i.e. without partner or informed consent). Without being well thought through could attract a lot of disagreement. Could list increase value to Māori businesses? But others might have other intentions. Certification schemes haven't always worked well in the past for the protection of Indigenous knowledge - as this recent review outlines. FAO and Alliance of Biodiversity and CIAT 2022. Labelling and certification schemes for Indigenous Peoples' foods – Generating income while protecting and promoting Indigenous Peoples' values. Rome.
<https://doi.org/10.4060/cc0155en>

There needs to be provision for the list to evolve over time. e.g. China's Pharmacopeia and mechanisms behind assessments/additions to do that (much like current assessment of novel foods).

Challenges in Australia around only 'traditional harvest' being considered, not grown as a commercial crop. Care needs to be taken with definitions and what is included.

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:

Critical to develop - relates to above comments (wider view of safety from Māori perspective as considers aspects such as spiritual). Need to be informed by Indigenous people. Indigenous knowledge around processing, rongoā and interactions with medications (e.g. kawakawa + blood thinning medication like aspirin can lead to further blood thinning). Therefore, it is critical to capture risk associated to products like that. FSANZ needs to work closely alongside Indigenous people to inform this.

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 fast-paced change in some areas of science this would be beneficial.

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

Yes

Free text box, no character limit:

Hauora - Māori philosophy of health and well-being. There are four dimensions of hauora: taha tinana (physical well-being – health), taha hinengaro (mental and emotional well-being – self-confidence), taha whanau (social well-being – self-esteem) and taha wairua (spiritual well-being – personal beliefs).

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:

Yes, would hopefully remove some of challenges for industries we work with.

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?

Positive

Free text box, no character limit:

Faster route to market.
Better understanding/flexibility and hence potentially better compliance.
Remove grey areas so less confusion.

Component 2.2

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

Prefer not to respond / I don't know

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Yes

Free text box, no character limit:

Why only Australian? The regulations are both Australia and New Zealand therefore should have both surely. Current situation with only the Australian Food Composition Data base being linked to by FSANZ, not the New Zealand Food Composition Database, causes some confusion as some industry think they have to use that and it is not always relevant. It could be better with a collaborative approach.

An issue is that there has been no NZ National Nutrition Survey since 2008/09 so this could present challenges making some assessments (Total Diet Study is about to get underway at least). Need a better approach both sides of the Tasman around data collection (both food composition and dietary intake) to better inform decisions.

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

Free text box, no character limit:

Food composition, including branded food data

Dietary intake

Food safety issues, including pesticide residues, etc

Component 2.4.4

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

Yes

Free text box, no character limit:

Most definitely especially in specialist areas that have limited expertise.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Science expertise

Component 2.4.5

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

Yes

Free text box, no character limit:

Greater clarity and intention of protection.

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:

Intent

Consequence

Linkages (small companies find this space especially challenging).

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:

Collaboration with enforcement agencies – currently lack of consistency in some areas (in our experience especially with regards health claims).

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:

Correct consultation is critical and we have covered this in some of our earlier comments.

Component 2.4.7

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

Yes

Free text box, no character limit:

Current differences in enforcement can be problematic. Should be a joint approach.

Component 2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

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

Yes

Free text box, no character limit:

From the perspective of a research organisation, including working directly with the food industry, there are a few key themes/areas relevant for us:

- Need a more agile/faster process to allow innovation without compromising 'quality' (tarnish our reputation)
- Science/evidence-based decisions
- Robust risk assessment
- Addressing pain points that we have identified from our interactions with industry
- Consistency internationally (acceptance of other regs/decisions as long as robust) but also enforcement across Australia vs NZ
- Whole food system focus
- Recognition of Indigenous knowledge

We are open to further engagement/discussion around these areas.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit: