

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 12:22:14

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Public Health Agency, Ministry of Health New Zealand / Te Pou Hauora Tūmatanui, Manatū Hauora. Established on 1 July 2022, the Public Health Agency is a branded business unit within the Ministry. The Agency provides public health leadership across the health and disability system and influences the wider determinants of population health to enable people, their whānau and their environments to be healthy.

Which sector do you represent?

Government

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:

The primary objective of protecting public health and safety is not reflected in the problems and subproblems analysed, and the analysis does not focus sufficiently on the long-term burden of disease from poor nutrition.

Some problems articulated mask other more pressing problems. For example:

- the subproblem on board composition ignores that an independent (from industry) public health voice is not guaranteed by the current s 116

- the subproblem on lack of a definition for 'public health' ignores the scope to strengthen public health in the Act, beyond merely including a definition of the term

- problem 2 does not consider that cost and time burdens experienced by consumers and governments if FSANZ does not undertake reviews and proposals in a timely manner.

The methodology provides 2 stark choices –status quo or enact a whole package of reforms. The analysis fails to explain to what extent changes could be

enacted under the status quo option, if at all. Also, more funding seems to be strongly aligned with option 2 and could also be a component of option 1 – enabling more funding to conduct functions with public health benefit.

There is little explanation of how the problems and subproblems were identified as the priority matters for consideration and insufficient information on the risk-based framework to provide fully informed comment in this submission.

The key assumptions underlying the cost/benefit model under the Net Benefit section on page 68 has a 7% per annum discount rate. This is very high for the base case and will mean that more distant costs and benefits have less impact than those occurring in the near future. This is tested in the Sensitivity Analysis, including with a 3% discount rate. The lower discount rate should have been used in the base case. That is the norm in health economics literature.

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

Free text box, no character limit:

Yes.

Methodologies which:

- give more value to social determinants, the inter-related World Health Organization's Sustainable Development Goals (particularly goal 2 – zero hunger), healthy nutrition, mental health and the environment

- include food security and the food system's vulnerability to climate change, pandemics and the like through impact analysis

- better identify costs across the health system and the whole of government

- consider inequitable impacts on high need populations (ie, population groups experiencing poorer health outcomes), particularly, indigenous populations.

Evidence as follows:

Of relevance is population health data on the anticipated impacts of the proposals on the health status of New Zealanders, and the possible impact of heightening or reducing inequities in health status. This is relevant to strengthening the Act's primary objective of protecting public health and safety. Population health data/modelling on the anticipated impacts of the proposals on the health status of New Zealanders is missing, as is an analysis of the potential impacts to inequities in health status. Also, evidence in terms of mātauranga Māori (Māori knowledge) and community voices has not been considered.

Under Te Tiriti o Waitangi, the New Zealand Crown has responsibilities to consider te ao Māori /mātauranga Māori in food regulation in the current review of the FSANZ Act. This includes aligning the Act to improve hauora Māori (Māori health) outcomes and to strengthen mana motuhake for whānau - supporting them to have control of their own health and wellbeing. Additionally, there is a responsibility to consider hauora inter-generationally and across the individual and community life-course and to do what we can to ensure food regulation adopts a strong focus on public and population health. This is with the aims of taking preventive actions upstream to address health inequities/need among populations and of achieving better health outcomes for all.

Further, protecting indigenous people's right to health is the New Zealand government's responsibility under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Act's review should include consideration of indigenous frameworks and solutions proposed by Kaupapa Māori researchers which investigate the issue of body weight and dietary health for Māori, which can relate to food supply: Full article: Kōrero Mōmona, Kōrero ā-Hauora: a Kaupapa Māori and fat studies discussion of fatness, health and healthism (tandfonline.com)

Alternative intervention models exist which reflect Mātauranga Māori, for example, the Atua Matua Māori Health Framework, which provides a strengths-based alternative to weight-focused health promotion factors were responsible for an estimated 8.6% of health loss in New Zealand, through both disability and premature death. Diet-related metabolic risks, including high body mass index, high blood pressure and high fasting blood glucose were also among the 6 risk factors that made the greatest contribution to health loss: Longer, Healthier Lives: New Zealand's Health 1990–2017 | Ministry of Health NZ

The consultation document lacks consideration of the impact of food regulation on (diet-related) health loss and this is at odds with the primary objective of protecting public health and safety. There are significant costs to individuals, whānau, communities and governments associated with the increase and overall burden of diet-related non-communicable diseases and obesity. Collectively, unhealthy diets are the greatest contributor to the preventable health burden in New Zealand. High body mass index contributes 8.3% and other dietary risks contribute 8.6% of disability adjusted life-years (DALYs) lost. Combined, this is greater than the estimated 9.7% of health loss from tobacco use: Implementing healthy food environment policies in New Zealand: nine years of inaction | Health Research Policy and Systems | Full Text (biomedcentral.com)

Data from the New Zealand Health Survey 2022/23 shows New Zealand has the third highest adult obesity rate in the OECD: Annual Update of Key Results 2022/23: New Zealand Health Survey | Ministry of Health NZ

One in 3 adult New Zealanders (over 15 years) is classified as obese, as 5 years' ago, and around 1 in 8 children between the ages 2-14 years (12.5%). Obesity rates are higher for Māori and Pacific adults and children and for those living in high deprivation areas. These differences are unfair, and the Food Standards Code is an important lever to address the determinants of these inequities in health status.

In New Zealand, the direct health care cost of obesity is about \$2 billion a year and the indirect cost, such as loss of productivity, is between \$7 billion and \$9 billion a year, according to 2021 research by Sapere. They say that obesity related conditions account for about 18 per cent of all healthy life years lost: Economic-Impact-of-Excess-Weight-in-NZ-15-Nov-2021.pdf (hapai.co.nz)

In 2022 about 307,400, New Zealanders were estimated as having diabetes. About 307,400 people in NZ were estimated as having diabetes:

<https://www.tewhataura.govt.nz/our-health-system/data-and-statistics/virtual-diabetes-tool/>

The lifetime cost of a 25-year-old developing type 2 diabetes is about \$565,000. Diabetes costs New Zealand about \$2 billion a year now, which is predicted to reach \$3.5 billion in the next 20 years.' Māori, Pacific and Asian people are likely to be worst affected: Microsoft Word - Diabetes New Zealand DRAFT report v0.42 - Executive Summary only.docx (healthierlives.co.nz)

Cardiovascular disease and ischaemic heart disease are very high ranked causes of death and disability for Māori, with dietary factors being amongst the most common risk factors. Cardiovascular disease mortality rate for Māori is twice as high compared to non-Māori. Cardiovascular disease 'is also expensive with an estimated annual cost to the health system of US\$2.3 billion (~ NZ\$3.3 billion).' Dietary risk factors are highly significant in terms of health loss: Prioritization of intervention domains to prevent cardiovascular disease: a country-level case study using global burden of disease and local data | Population Health Metrics | Full Text (biomedcentral.com)

Pacific people have high rates of multi-morbidities, connected to diet. By the age of 65 years, more than half of all Pacific peoples in New Zealand are living with diabetes. Death rates from heart disease and cancer are also significantly higher for Pacific compared to non-Māori non-Pacific people: Tofa Saili: A review of evidence about health equity for Pacific Peoples in New Zealand (nzdoctor.co.nz)

The impact of food regulation on health loss is not limited to obesity. Specific foods and nutrients contribute to New Zealand's burden of disease across the lifespan. There is, for example, compelling evidence that the consumption of processed red meat and red meat causes colorectal cancer. https://www.iarc.who.int/wp-content/uploads/2018/07/pr240_E.pdf

New Zealand has one of the highest rates of bowel cancer in the world: Bowel cancer symptoms & statistics - Bowel Cancer NZ . According to Bowel Cancer New Zealand, of the 1,200 Kiwis who die from bowel cancer every year. Twenty-two percent of Māori were diagnosed with bowel cancer in their 50's, compared to 12% for New Zealanders overall. Māori aged ≥ 25 years had significantly higher cancer registration rates with cancer mortality more than 1.5 times higher for Māori: Cancer web tool – Health New Zealand | Te Whatu Ora

In a study of 30,000 packaged foods and beverages in New Zealand supermarkets, researchers analysed the food and beverages by applying the Health Star Rating system, rating by level of processing and nutrient composition. Nearly three-fifths of these foods had a low Health Star Rating (<3.5), half were discretionary foods, and over two-thirds (69%) were highly processed. Yet, eating higher amounts of highly processed foods increases the risk of death and disease. <https://www.informas.org/state-of-the-food-supply/>

Ultra-processed food exposure and adverse health outcomes: umbrella review of epidemiological meta-analyses | The BMJ

Consumption of ultra-processed foods and risk of multimorbidity of cancer and cardiometabolic diseases: a multinational cohort study - The Lancet Regional Health – Europe

One in 2 5-year-olds have dental caries with sugar being a principal cause of decay. The cost of treating dental diseases in New Zealand is over \$1 billion per year. Nearly half of New Zealand adults (44%) experienced unmet need for dental care due to cost in the past 12 months: <https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/oral-health-data-and-stats/age-5-and-year-8-oral-health-data-community-oral-health>

These are significant concerns, and they are heavily influenced by the food regulation system. Food composition, labelling and marketing standards are key levers for promoting a healthy food supply and can help address long-term public health challenges.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Policy problem 1 – purpose and objectives of FSANZ are not clear

Subproblem 1 – Lack of definition for 'protecting public health and safety': The impact ratings (3) and overall rating of 9 overstate the significance of there being no definition in the Act for 'protecting public health and safety.' We consider an overall rating of 7 instead of 9 to be more accurate. As recognised in the IA, FSANZ does already take-into-account longer-term public health. Clarifying purpose and objectives is likely to be beneficial, but not significantly without other changes to strengthen the primary objective of protecting public health and safety.

However, we are concerned that there is confusion about how FSANZ should consider long-term risk to health when developing food standards and the impact of inaction is high. We are not confident that FSANZ is considering long-term risks to health sufficiently. At the July 2023 Food Ministers' Meeting, Food Ministers agreed to Strategic Outcomes for the Joint Food Regulation System which focus on food safety, healthy food supply, informed and empowered consumers and a thriving food economy. FSANZ must be positioned to support the outcomes pursued by the joint system. It is not clear what the process is for FSANZ to consider the impact of standards on the healthiness of the food supply:

<https://www.foodregulation.gov.au/activities-committees/food-ministers-meeting/communiques/food-ministers-meeting-communique-28-july-2023>

The unhealthy state of the food supply suggests that FSANZ does not consider the nutritional quality of general food items (except for special purpose foods, like infant formula and supplementary foods).

Therefore, we support greater certainty in the Act – clarifying inclusion of the long-term burden of chronic illness. This is also taking account of the fact that Ministerial guidelines issued by the FMM are not binding on FSANZ and are considered alongside 4 other factors, each of equal weighting in s 18(2). We propose a definition of 'public health' in this submission.

Subproblem 2 - Confusion about the factors to which FSANZ has given regard in its decision-making, and how this aligns with the objectives of the Act

The ratings for this subproblem appear to be understating the problem – with an overall rating of 2. The confusion mentioned under subproblem 1 is in part a manifestation of subproblem 2, yet it has an overall rating of 9. This review is an opportunity to reinforce the Act's primary objective of protecting public health and safety, elaborate and build on the outcomes in s 18(2), and give greater priority to FMM guidance and recommendations.

Subproblem 3 – Lack of inclusion of Māori and First Nations peoples: The analysis understates the difficulties with lack of attention to the needs and commitments of government funded entities such as FSANZ to Māori. This is a serious deficiency in the Act impairing the regulatory system's ability to proactively partner with the indigenous peoples of our 2 countries. It also does not reflect the New Zealand Government's responsibilities under Te Tiriti o Waitangi. Nor does it meet our obligations under the Pae Ora (Healthy Futures) Act 2022 to improve health outcomes and address health need/ inequities for Māori and other priority populations. Words in legislation will need to be backed up with changes in FSANZ's governance and operations.

Policy problem 2 - legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

Subproblem 1- statutory processes are rules-based rather than outcomes based: The text under this subproblem does not align with the focus on outcomes in the heading. It instead suggests the current FMM processes for ratification of all applications and proposals are unnecessary, rigid and cumbersome. We recommend a stronger outcomes focus in the Act, separate from any consideration of ratification processes. We have made suggestions elsewhere in this submission to amplify and extend the outcomes in s 18, including within the risk matrix framework.

The current Ministerial ratification procedures are important to New Zealand's territorial sovereignty on food standards regulation. This is particularly considering there is no opportunity to debate individual changes to the Food Code in New Zealand's Parliament before adoption into domestic legislation. Therefore, there should be a cautious approach to any changes to the Act to avoid ratification. This is so that officials in FSANZ or Australian public servants are not the ones deciding what is incorporated into New Zealand's domestic food law. Also, any changes need to include guarantees that public health and safety are effectively assessed.

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):

Yes, although it would be better to amend the definition in s 4 so it applies throughout the Act and strengthen the primary health objective of protecting public health and safety throughout the Act (at key function and decision points), rather than only concentrating on ss 3 and 18.
the wording of the definition (in s 4) and
the extent to which it is applies throughout the Act at key function and decision points.

The FMM 2013 definition proposed for incorporation in the Act does clarify that 'public health and safety' includes impact on, and contribution to, long term conditions as well as immediate safety and disease risks. It also signals the importance of preventing those conditions and doing so at the community and population levels. However, the FMM's definition narrows what 'public health' means. This is because it refers only to consumption (not also production, supply, access/affordability, marketing, sustainability, disposal and waste etc). The recently released New Zealand Office of the Auditor-General report into imported foods emphasizes:

'Managing food safety risks requires a robust food control system. International best practice indicates that it should be science- and risk-based and cover all aspects of the food chain. A prevention-based approach, where safety is part of the entire process (from food production to consumption), is most effective for reducing the risk of foodborne illness or injury.' (Emphasis added.) Monitoring importers of specified high-risk foods — Office of the Auditor-General New Zealand (oag.parliament.nz)

Therefore, the FMM's definition should not refer only to 'food consumption.' Instead, the definition should provide along-the-lines-of:

'Public health and safety in relation to food refers to all those aspects of food regulation under the Act 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 (and the diet related risk factors for them) as well as acute and cumulative food safety concerns. (Replacement words bolded.)

In addition, the definition of 'public health' could be in s 4 – the interpretation section – so that it applies consistently throughout the Act rather than only in ss 3 and 18.

The Review should have gone further than merely considering defining 'public health.' A real policy problem is that public health is in the Act to give international credence to our food system, yet it is being diluted by other considerations, and is insufficiently considered in the actual processes and decision points in the Act.

The following are among the multiple changes which we suggest for inclusion in the Act to strengthen its primary public health and safety objective. This is in addition to defining 'public health' in ss 3, 4 and/or 18(1):

Elaborate on protecting public health and safety in s 18(1) to specifically include: supporting good nutrition (ie, enable consumers to make food choices in line with national dietary guidelines) and reducing the burden of diet-related disease, particularly for Māori and First Nations peoples and other high need populations.

Require engagement with Māori and First Nations communities and partners.

Include specific public health and safety reporting obligations on the Authority in s 20 (Authority develops 3-year plan).

Amend s 116 to include at least one member who is an independent (from industry) public health expert – not public health or science and not a primarily industry person with some public health expertise.

Refer to public health outcomes in s 18(2) that the Authority must have regard to. One of these could include, 'have regard to any potential long-term health impacts of particular foods and food components at the population level or among particular populations.' Another could include 'have regard to

any current dietary guidelines of the governments of Australia and New Zealand.'

Include a new obligation to inform the FMM of how FSANZ has given effect to the primary objective of protecting public health and safety in the draft standards or variations it approves under s 34 and include these matters in its s 33 reports. The aim with this is to address FSANZ's current assumption that public health benefit attaches to all its work.

Sections 22-23 on industry preparing applications, their contents and process requirements, could place an onus on industry to demonstrate how they have taken-into-account the primary objective of protecting public health and safety in preparing the application.

Include independent (from industry) public health and consumer competency requirements in the Act for those who conduct the reviews. This is in part to prevent industry capture at this point in the process.

Ensure that the assessment of application requirements in the Act and Code require consideration of public health and safety rather than specifying it as an alternative among other considerations (eg, public health or safety; public health or science).

Require the Board when establishing committees to ensure they include independent (from industry) public health and safety expertise.

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

Not significantly unless the definition is tied to other amendments throughout the Act (and Code) suggested above to strengthen protecting public health and safety. Also, there needs to be greater alignment between FSANZ's priorities, processes and decisions and:

Government policy on nutrition and dietary guidelines in both Australia and New Zealand
the need to involve other regulators and government agencies to gain traction on the social determinants of health – which includes nutrition.

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

Positive

Additional comments (optional):

Some of the confusion around the scope of 'public health and safety' will reduce. However, of far greater impact would be substantive amendments to the Act (and Code) to strengthen the protecting public health and safety objective.

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:

Given the current power in s 15 for Ministers to give policy directions, the obligation on FSANZ in s 18(2) to 'have regard to' Minister's guidelines along with the range of other factors in subs (2) seems too weak and could be strengthened. We recommend that s 18(2) should be amended so that prioritises Ministerial Policy Guidance to ensure FSANZ makes decisions in line with those guidelines before moving on to factors listed.

Information on how the Ministerial Policy Guidance has been complied with should be communicated in reporting to Ministers.

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:

More inclusive, culturally accessible and credible legislative language would be an improvement.
Engagement, consultation and transparency with Māori communities and partners, including relationship building, should be required in deciding what the specific changes should be. This should involve accelerating tier 3 components (including co-design) on greater inclusion of Māori people.

Subject to the views of the affected groups, substantive content improvements could be made to the Act, recognising that Māori have distinct perspectives (te ao Māori), aspirations, and experiences to the population at large:

‘Health risk factors have been predominantly framed through a non-Māori lens, which fails to recognise indigenous and Māori understandings of health which are generally broader, more holistic, embedded in collectivism and which acknowledge the importance of wairua (spirit) and te Taiao (environments).’

[HNZ-TWO-Health-Status-Report_2023_reduced.pdf \(tewhatauora.govt.nz\)](#)

The effects of colonisation, as a key determinant of health for indigenous people worldwide, need to be considered. This includes its impact on healthy behaviour and system challenges for Māori: Full article: Colonisation, hauora and whenua in Aotearoa ([tandfonline.com](#)); and Indigenous adaptation of a model for understanding the determinants of ethnic health inequities | Discover Social Science and Health ([springer.com](#))

In 2011, the Waitangi Tribunal published its decision on the Wai 262 claim which considers the Crown’s responsibilities to protect taonga (anything culturally prized/ treasures) and mātauranga, including about kai. We include a link for your reference, as the Tribunal’s decision has implications for the current review: Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released | Waitangi Tribunal

It is not sufficient to put inclusive language in the Act. Also needed will be attitudinal and organisational changes to ensure, for example, that FSANZ appropriately safeguards Māori guardianship and data sovereignty interests (to the extent that this is within its powers).....

Other changes to the Act could include board composition requirements in s 116 and specific cultural competency requirements and amending s 18(2) to specify that there are cultural considerations the Authority must have regard to.

Furthermore, the FSANZ Act does not sufficiently take account of Pacific people’s cultural perspectives. We attach this article on labelling processes failing to consider such perspectives, by way of illustration. Perceptions of New Zealand nutrition labels by Māori, Pacific and low-income shoppers - PubMed ([nih.gov](#)).

In addition, the research to date suggests a low use and resonance of food labelling contents among Māori, Pacific and high deprivation populations. The Act should provide for these perspectives, and include consultation with Pacific peoples as well as Māori. This is considering more than 8 percent of New Zealand’s population identifies as of Pacific origin, and Pacific peoples’ experiences of diet-related and socio-economic inequities.

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:

Māori should be asked to advise on what specific changes should be made to the Act to promote recognition of their culture and expertise. Subject to their views, potentially, the term ‘traditional foods’ could be replaced with ‘indigenous foods.’ Further, a specific pathway could be created for ‘novel indigenous foods’ (eg, indigenous foods that have been genetically modified). The category of these foods would need to be reviewed regularly in partnership with indigenous groups.

The legislation could put an expectation on the Board, board committees, the Authority, FRSC and Food Ministers to:

- have regard to the strength and nature of Māori and Australia First Nations’ interests in the matters under their consideration
- regulate in a manner which is culturally safe and responsive to Māori and Australian First Nations’ needs.

These obligations would be manifest through the way applications, variations, proposals, guidelines and codes of practice are developed and decided. This is instead of the suggestion in Tier 2 of the IA which considers changes to assessment proposals and applications only. We recommend a more comprehensive approach, embedding Māori and indigenous voices throughout FSANZ’s processes and decision-making, including accelerating tier 3 components.

Component 2.1

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

Yes

Free text box, no character limit:

Under Te Tiriti o Waitangi, the New Zealand Crown has responsibilities to consider te ao Māori/Māori dimensions in food regulation. Therefore, we suggest the following changes:

- Elaborate on protecting public health and safety in s 18(1) to specifically include: supporting good nutrition and reducing the burden of disease, particularly for Māori This includes alignment with their aspirations for improving hauora Māori and their intergenerational health.
- Expressly provide for Māori and Australian First Nations’ representation on the board in s 116 of the Act.
- Require specific reports to Ministers on protection of Māori, Australian First Nations public health and safety.
- Consider establishing new pathways for indigenous foods and novel indigenous foods, supported by accessible tikanga friendly guidance, written by Māori.

• Require meaningful engagement with Māori and Australian First Nations. FSANZ needs to build individual and organisational capability to engage with Māori. New Zealand public services resources are available to support this Te Tiriti o Waitangi Guidance for Policy Makers and the Māori Crown Relations Capability Framework for the Public Services. We note you have referenced a Canadian resource but not this New Zealand one 'much closer to home.': TA013.02-MCR-capability-framework-guide.pdf (tearawhiti.govt.nz)

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?

Prefer not to respond / I don't know

Free text box, no character limit:

There is insufficient detail in the IA on the risk-based framework to be certain of this. The lack of detail makes it difficult to assess whether improved public health outcomes will result from the proposed framework. For example, would the framework only apply to applications, given that proposals are likely to be high risk? Would it apply to guidelines and Codes of Practice as well as applications and variations? Is it inexorably linked to allowing the Board to delegate to senior officials, or can it operate without that change?

We request a separate consultation on the risk-based framework to ensure public health concerns are addressed.

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

Free text box, no character limit:

We have viewed the risk matrix and case scenario materials prepared by the Department of Health and Aged Care and the Canadian risk factors referred to in the IA itself. The former (included as an example) contains general prompting questions, such as:

Alignment with strategic priorities 1. Is the application/proposal a strategic priority (eg, for innovation, safety, health) as FMM?

Extent of risk 3. How significant is risk to public health or safety/how complex is the risk assessment?

These are relevant considerations, although not sufficiently targeted towards protecting public health and safety, particularly among diverse populations. Protecting public health and safety could be a criterion reflecting its status as the primary objective.

Also, 3. above asks about public health or safety in the alternative rather than as the 2 applicable ingredients of the primary objective. This use of the alternative should be removed from FSANZ's documents.

The general risk matrix framework should reflect the outcomes and factors in s 18 of the Act (eg, the need for standards to be based on risk analysis using the best available scientific evidence). This section also gives effect to the Joint Food Standards Treaty. This would newly include elaboration of protecting public health and safety and recognise Māori and other voices /perspectives and impacts.

Additional, practical factors which are likely to underly the choice of categorising the matter under consideration as low, medium or high risk include:

the degree of regulatory rigor is proportionate to the level of risk, bearing in mind the need to avoid undue compliance burden and efficient Code (etc) changes

the category chosen takes account of the need for credible, reliable assessments and our international reputation

cost neutral for consumers – rather than costs passed on by industry (note that in this regard FSANZ should explore what regulatory incentives and controls it can establish)

consistent with the Code standards

cumulative effect on the Code of making the change

degree of complexity – does assessment require technical, subject matter expertise? Is it likely to be controversial?

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

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. Without more detail this is hard to assess.

Categorisations of risk based on low, medium and high are by their nature simplistic and arbitrary. There are also risks of pro-industry unfounded assumptions and bias in risk categorisation – with industry applications largely being treated as low or medium risk and public health considerations classified as high risk and therefore not being applied to any new pathways to amend food standards.

Therefore, there needs to be clear checks and balances in place to give due weight to protecting public health and safety and other concerns. For example, this could include a requirement to evaluate and review resulting Code changes to check assumptions made during assessment and to identify unintended consequences. What the harmonisation process looks like and how public health and safety concerns are protected should be clearly stated.

Also, taking account of potential gaps in evidence, a category which recognises ‘increased regulatory interest’ - where there is some but not yet sufficient evidence of potential risks to human health – could be useful. In New Zealand, categorising a food as increased regulatory interest enables government to collect information to identify the need for any additional risk mitigation or management measures.

We request that you consult New Zealand and the other jurisdictions on the risk matrix framework's contents and that Food Ministers approve it. In-order-to give it visibility, it could be attached to the Act in a Schedule or in Regulations, or at least included on FSANZ's website.

Finally, consistent with the reference in the Australia-New Zealand Joint Food Treaty to ‘systematic application of public health risk analysis and risk management principles to the development of food standards’, we request that the work be done to identify and confirm this precise public health analysis and principles with public health stakeholders.

Component 2.2.2

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

Yes

Free text box, no character limit:

FSANZ can do this now (s 112).

New Zealand recognises the equivalency of food safety control systems such as the United Kingdom, the European Union, Canada and the United States. However, local context, including indigenous and cultural perspectives, should supplement these risk assessments, particularly in the case of high-risk foods, novel foods, or foods of cultural significance to indigenous people. Equivalent jurisdictions’ risk assessments of initiatives of public health benefit could also be considered and fast-tracked for adoption.

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:

This question signals the wrong priority – efficiency and effectiveness – instead of the primary objective of protecting public health and safety.

The Joint System impacts our domestic food system levers for addressing domestic priorities as it replaces domestic food standards for composition and labelling, which means that the system needs to be responsive to New Zealand’s specific context and interests.

We have a concern that automatic adoption of another jurisdiction’s regulatory assessments could undermine Australian and New Zealand food sovereignty, and specifically attempts to be more responsive to First Nations, Māori and other New Zealand priority populations. It would not necessarily reflect the current contexts of Australian and New Zealand. For example, New Zealand's childhood obesity rates could be taken as indicating FSANZ should give more priority to preventing the long-term burden of disease by implementing more stringent standards on foods high in sugar, salt and saturated/trans fats marketed for infants and young children. New Zealand researchers have found that nearly 70% of the packaged food sold in our supermarkets meets the UPF classification and that we now consume about half our energy intake from these foods. Targeting ultra processed foods would make the biggest dent in obesity rates.

The legislative context of individual jurisdictions (eg, whether they have taxes or bans on ultra-processed foods elsewhere in their legislative databases), will influence whether they also address them in food standards’ codes. For example, some countries may have sugar sweetened beverage taxes and ban ultra-processed foods in school and early child-care settings (as in Chile) - meaning their regulatory assessments are different to that of New Zealand's and Australia's. In other words, the approach in another jurisdiction is often not one that can automatically apply the same or similar effect to New Zealand and Australia.

Automatic adoption might also conflict with a more holistic assessment of the impact of an application, proposal or review on the Code as a whole.

Therefore, there should be an initial protecting public health and safety and holistic assessment check before adopting any jurisdiction's regulatory assessments.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. It may if the risk criteria and its application are robust, but improving efficiency and effectiveness is not the Act’s primary objective.

Also, most public health benefit is likely to arise from proposals and reviews, not applications. In terms of a framework for reducing time spent on applications, what guarantees are there that savings/resources from a more efficient and effective applications framework will apply to proposals and holistic reviews of standards? Can this be legislated for?

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. Without more information, we have concerns that it may introduce more regulatory complexity overall and more opportunities to by-pass public health and safety risk assessments and public consultation - especially with Māori.

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

Negative

Free text box, no character limit:

Without more information, such as on checks and balances, we have concerns that it may introduce more regulatory complexity overall and more opportunities to by-pass public health and safety assessments.

Further, Appendix D suggests that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health; and where are the guarantees that any efficiencies will be redirected to processing public health proposals, evaluations and reviews?

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

Yes

Free text box, no character limit:

New pathways should only be explored /created if they uphold the primary objective of protecting public health and safety.

Subject to the views of Māori and First Nations peoples, as well as an indigenous foods pathway for traditional foods, a novel indigenous foods pathway could be created such as for genetically modified indigenous foods. These pathways should take account of: Mātauranga and tikanga relating to handling and treatment of kai, which will vary according to iwi (tribe), hapū (descendant groups) and whānau (families). They should also take account of data sovereignty implications and kaitiaki (guardianship) interests in some Māori foods.

Component 2.2.3

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

No

Free text box, no character limit:

Flexibility and efficiency are not the only considerations. The appropriate accountability level for FSANZ decisions and functions and the requisite competencies of decision-makers are key considerations. In this regard, there is insufficient detail provided on the interplay between the risk matrix and greater delegation.

In terms of ensuring flexibility and efficiency, s 112 of the Act already allows FSANZ to not do certain things in relation to an application or proposal (ss 22 and 55) if another government agency has already done them. In other words, it can rely on the work of other government agencies in some cases, subject to public notice. The Board can also establish committees to do a lot of its work (s 118).

Extending Board delegation powers is not the only means to achieve efficiencies, and delegation does not necessarily guarantee efficiencies in any case. The Board can by resolution already delegate many of its functions to a senior member of FSANZ staff (s 150(1)). However, the functions it cannot delegate and the functions the CEO (who is on the Board) cannot exercise under Board delegation (s 129) are key to demarcating what the Board's role is. (These limits align with the Board's Charter and the Public Governance, Performance and Accountability Act 2013 to which FSANZ is subject.)

Section 116 goes into some detail to specify the various competencies of board members – including public health expertise. These competencies could be side-lined by the Board delegating to the CEO or another senior official of FSANZ.

Further, a single official's decisions are less open to debate and scrutiny than those of the multidisciplinary Board. Transparency of decision-making at the right level of accountability – the Board - is important.

In the case of the CEO, they can subdelegate to any staff member of FSANZ (s 130), so quite important decisions would risk being decided at a less senior level in a less collaborative way.

Also, we are concerned that the voices of the 3 board members nominated by NZ, and new Māori and First Nations representatives, could be bypassed through delegation to an Australian official – which would appear to be a move away from a truly joint food regulatory system.

We also have reservations about FMM's delegating more of their functions to Australian departmental officials. The Food Safety Minister represents New

Zealand among the FMM. Australian department officials do not represent New Zealand.

Even seemingly minor and technical details of food regulation can have political or strategic implications. Therefore, it would not necessarily be a simple matter to authorise delegation of only minor and technical decisions to officials.

The FMM's approval function is one which needs to remain with the Ministers, because that is the means through which to protect New Zealand's territorial sovereignty. Only on approval, and Gazette notification, are Code changes incorporated into our domestic law.

Ministerial powers to give directions to FSANZ under s 15 as to how FSANZ conducts its powers should not be delegated to departmental officials, nor should its powers to request a review under s 113.

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

Free text box, no character limit:

Some of the same considerations, discussed under the questions relating to the risk matrix framework, also seem relevant here. In addition, the following are particularly relevant:

that decision-makers are competent and representative – able to make decisions which are safe, promoting health – particularly among high priority populations, culturally responsive, ethical and avoiding industry capture

the ability to assess the impact on the Code content and the Code overall – the Board should have the expertise and overall strategic view, compared to a single CEO or senior employee

that the Board is accountable for its decision to FMM, industry, consumers and the public at large.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. There is insufficient explanation of how streamlining decision-making would protect public health and safety (if it would).

It would be encouraging if time and resources are allocated increasingly to proposals and holistic reviews where there is likely to be more public health benefit. There is no guarantee of this in the current review proposals, however.

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

Free text box, no character limit:

Whether the proposed delegate has the requisite subject matter expertise, strategic overview, cultural and population health level perspectives. Also, whether they are appropriately accountable / at the correct level of accountability and whether there are checks and balances against bias, conflicts of interest, and sub-delegation.

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?

No

Free text box, no character limit:

Not a one-off investment. FSANZ would need to partner with Māori to prepare this list, to be regularly reviewed, and prepare guidance material by or with, and for Māori to ensure the 'traditional' food pathway in the Code is accessible. FSANZ should consult more broadly with Māori and First Nations' peoples on what they want from the food regulatory system. Rather than a one-off investment, it would be better to building a standing/collaborative partnership with indigenous groups, considering how this knowledge is captured and disseminated back to communities in mana-enhancing and culturally appropriate ways. This is also taking account of taonga status of some kai (eg, freshwater eels, crayfish and mussels), which will require cultural expertise and tikanga guidance.

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:

It might make FSANZ's processes more accessible to Māori and other indigenous food businesses. Māori must be involved in assessing the case for such guidance, and in its development.

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:

More holistic reviews would enable better assessment of the effects across the Code, not just of single ingredients added to one standard. Regular reviews would help assess the effectiveness of aspects of the Code and enable learnings to be applied to future Code applications and proposals. Standard reviews should be subject to a statutory timeframe for completion. The primary objective of protecting public health and safety should be applied in prioritising the content of reviews. We support the current timeframe/preference given to FMM requested reviews.

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

Yes

Free text box, no character limit:

FSANZ could use more bundling together of complementary policies and food categories in terms of Code changes and guidance. This would have the added benefit of enhancing efficiency and cohesion.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

The IA suggests that use of non-binding guidelines approved by FSANZ Board, but not ratified by FMM, would be a feasible alternative in some cases to applications, resulting in standards approved by the Board and approved by Ministers. However, we would be concerned from a jurisdictional sovereignty perspective if guidelines enable deliberate by-passing of FMM policy guidance and ratification. (New Zealand has only 3 members on FSANZ's Board). Further, greater resort to non-binding guidance and Codes of Practice in place of application processes could weaken existing requirements to protect public health and safety. So, there would need to be checks and balances to address these concerns.

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:

Matters of interpretation and application.

Where innovation is in its initial stages, industry, consumers and the public health sector may benefit from FSANZ publishing guidelines/guidance on things like whether there is any application of generative AI in the food system, what are the risks and how they can be addressed.

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:

The development of any Codes of Practice and guidelines should align with the risk framework (incorporating public health and safety considerations) and avoid conflicting with, by-passing or undermining the framework.

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

Negative

Free text box, no character limit:

Public health and safety would not be protected, in breach of the Act's primary objective.

If developed by industry there is the likelihood of self-serving misapplication, and work arounds of the Code's standard. Industry self-regulation does not work effectively to reduce unhealthy food production and consumption and in the longer term prevent the burden of disease linked to them. For example:

- the industry self-regulatory marketing codes for alcohol and other foods are voluntary codes in New Zealand. They are not enforceable and rely on consumers to navigate jurisdictional limits to have their complaints heard, often some-time after the marketing campaign has finished

- If Health Star Rating labels were mandatory, then New Zealand consumers would know that nearly three-fifths of packaged foods on our supermarket shelves have a low Health Star Rating (<3.5). Using other classifications, half of these packaged foods are discretionary and over two-thirds (69%) are ultra-processed: <https://www.informas.org/state-of-the-food-supply/>

- Australian and New Zealand State of the Food Supply reports provide evidence that voluntary industry-led initiatives have limited efficacy and reach within a joint system that is underpinned by harmonised food regulation.

Component 2.2

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

Yes

Free text box, no character limit:

There is potential to design better review processes, so that the Board is aware earlier of the views of FMMS, rather than the latter communicating review decisions after 60 days have elapsed.

There should be a statutory timeframe for standard reviews and for completing proposals.

There should be reviews looking holistically at the Code.

The expedited applications process, dependent on the industry applicant paying a fee for preferential treatment, should be deleted from the Act.

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

Although, governance skills (eg, finance, legal, strategic) are inherently important to most Boards selection of members, so we disagree with cluttering the Act with these. If expressly included they could detract from subject matter competencies, including those of public health, culture, indigenous voice and consumer voice.

We would prefer to see a statutory requirement that at least one public health representative, distinct from industry and science expert representation, will be included on the Board. In practice, desirable competencies are public health nutrition and public health epidemiology expertise. We doubt also that there is a simple or correct choice between Board (strategic) and officials (technical) since the board is accountable for all the Authority's functions, as reflected in its statutory compositional requirements.

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

No

Free text box, no character limit:

Independent public health expertise, and indigenous (and other populations') perspectives and expertise about their culture and food, should be represented and reflected in s 116. We consider there are more risks of conflicts of interest and industry over-representation with an open market process.

Component 2.3.2

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

Positive

Free text box, no character limit:

It would remove an implication that, by paying, a business can get preferential treatment. Maintaining a level playing field among industry players is important. Removing the option to fast-track applications could also support more robust risk matrix framework considerations. The option to expedite could become a best endeavours obligation to expedite all applications as soon as reasonably practicable.

Component 2.3.3

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

Positive

Free text box, no character limit:

The Code is very much to the benefit of industry, and they should expect to pay more towards funding FSANZ, so we support an industry-wide levy.

However, there may be no direct, positive impact on public health unless there are legislative commitments to apply a fair proportion of the levies received to the primary objective of protecting public health and safety.

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:

Specify in the Act the authority to cost recover and the cost recovery principles so that they are transparent and impose consultation with stakeholder requirements. In New Zealand, Treasury's 2017 guidance specifies principles which are still current: Guidelines for Setting Charges in the Public Sector | The Treasury New Zealand. In large part they were adopted in s 343 of the Therapeutic Products Act 2023: Therapeutic Products Act 2023 No 37, Public Act 343 Principles for cost recovery – New Zealand Legislation

The levy rates could also factor in that industry does not currently pay the costs of publicly funded health care arising from unregulated access to cheap, unhealthy food and drinks. The levy rate could include a percentage of the total fee for this.

More complex or sizeable applications that require more resource could attract a levy at a higher rate and/or sizeable business applicants could pay more than smaller businesses. Applications for only minor or technical corrections could attract a nominal fee.

Consideration should be given to industry applicants paying substantially more towards the costs of FSANZ conducting its functions (than the current approximately 10%), given industry substantially benefits (including reputationally from public health and safety components to FSANZ work). New Zealand's Medsafe is not a joint country agency which is predominantly government funded, the Therapeutic Products Act 2023 provides a regulatory model which requires industry to pay more. Section 342 says that the Regulator, chief executive and the Minister must take all reasonable steps to ensure the costs of administering the Act are not from Parliamentary appropriation and are met by way of fees, levies or otherwise. The costs of administering the Act are direct and indirect costs incurred or reasonably expected to be incurred by the Regulator in performing their functions under the Act.

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:

No response.

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

Neutral

Free text box, no character limit:

There may be a stronger onus on the Authority to demonstrate through their processes that the fees are fair and proportionate and reflect their reasonable expenses.

Compulsory fees may be a barrier to Kaupapa Māori business, and to small, but innovative businesses.

There should be no message that industry applicants get preferential treatment for accelerated applications by paying more or for paying a levy.

FSANZ would have more funding and could ideally focus more on functions with public health benefit (eg, proposals, reviews (including holistic), and evaluating whether the Code changes meet s 18's outcomes).

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:

It is not FSANZ's statutory role to assist with entrepreneurial activities (see s 13). To undertake such activities may lead to regulatory capture. Also, FSANZ has limited resources to achieve s 18 outcomes, so caution should be applied to additional revenue generating activities that may distract from this.

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:

There should be statutory levy principles and an obligation to consult with the jurisdictions and industry prior to levy setting or changes. Whatever the principles and criteria, they should avoid the overt or implicit message to industry that it gets preferential treatment for paying a levy.

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:

FSANZ is mostly government funded (and funded by Australian and New Zealand taxpayers). FSANZ's statutory responsibilities, like the primary objective of protecting public health and safety, should not become so overtly dependent on resourcing on an ad hoc basis.

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

Negative

Free text box, no character limit:

As industry (not the jurisdictions) is primarily responsible for Code non-compliance, it would not be fair to impose a food recall coordination levy on enforcement jurisdictions. FSANZ could apply a food industry levy to recover the reasonable costs of coordinating a food recall. More complex or sizeable food recalls (using more resources) could attract a higher levy than minor or small-scale food recalls.

How would this need to be implemented to be successful?

Free text box, no character limit:

No response.

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

Other

Free text box, no character limit:

Unsure. While a levy per recall may be fairer, and incentivise industry compliance with the Code, it may be more costly to administer than an automatic annual levy across the board.

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:

This may disincentivise jurisdictions at the expense of consideration of important /novel proposals, including those that benefit public health and safety.

How would this need to be implemented to be successful?

Free text box, no character limit:

Timely completion of proposals would allow new proposals to be added and existing proposals to be prioritised. There should be transparent criteria that the Board can apply to assess what should be added to the workplan via jurisdictions' proposals.

Component 2.3

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

Yes

Free text box, no character limit:

A new provision could be inserted in the Act regulating the period within which proposals for standards or variations must be completed (as for s 109 for applications). Three years appears to be a reasonable completion time.

There have been instances of major obstruction in changing the Code (eg, the length of time to get pregnancy warning labels). Consideration should be given to including an obstruction offence in the Act and the opportunity to additionally levy people who interfere unduly in FSANZ conducting its statutory functions.

A levy could support nutrition surveys in Australia and New Zealand.

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?

Yes

How would this need to be implemented to be successful?

Free text box, no character limit:

Yes, although to some extent this already occurs. Done well, it could facilitate more effective planning and joint understanding of resourcing pressures, the implications of taking on items of work, and of burgeoning risks and opportunities. However, the FMM can direct FSANZ (under s 15) in exercising FSANZ's powers, so 'joint' agenda setting should not detract from that power to direct and the implicit Ministerial levers behind it.

To be successful, a protecting public health and safety test could be applied and this would not be a test applied only either to public health or to safety or public safety.

Include public health and indigenous subject matter experts' input and weightings to value these things highly.

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

Free text box, no character limit:

Those outcomes and factors in s 18, together with the additions suggested in this submission.

Some of our concerns include:

- addressing the burden of disease, due to poor diet and overweight
- providing effective and timely consumer safety protections
- enabling consumers to make food choices which are healthy
- protecting children
- identifying and mitigating inequitable impacts between populations, particularly inequities experienced by Māori/First Nations peoples and capturing indigenous understanding of risk and benefit which are framed through te ao me ōnaā tikanga Māori (the language and its cultural practices) (eg, the demonstrated harm to Māori New Zealanders of consuming highly processed foods included in the Code)
- contributing to healthy food environments, such as adopting a strong focus on restricting marketing of alcohol, foods high in sugar, salt and saturated/trans fats and ultra-processed foods, particularly to children
- avoiding industry capture and undue influence.

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

Free text box, no character limit:

FSANZ must give effect to FMM directions (s 15) in conducting their functions under the Act. In the New Zealand context, Crown agent Crown entities must give effect to Ministerial policy directions and, in practice, even in the absence of a formal direction, this is interpreted to mean they must more generally act in accordance with government policy in conducting their statutory functions and comply with the Minister's 'no surprises' expectations.

FMM could issue an annual letter of expectations to FSANZ.

FSANZ could better explain how it gives effect to the FMM's directions, requests and policy guidance. This could be in the annual report, for example.

Component 2.4.2

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

Yes

Free text box, no character limit:

Noting that FSANZ already attends the FRSC policy development working group meetings.

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

Free text box, no character limit:

More funding for FSANZ's statutory responsibilities.

Identify priorities in common, and not shared, as early as possible.

Early joint agenda setting.

A FMM letter of expectations to FSANZ annually.

A requirement on FSANZ to explain how it has adopted FMM policy guidance and requests.

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:

The proposal only applies to Australia. However, reciprocal sharing information FSANZ collates from others of the Australian jurisdictions would benefit New Zealand and those jurisdictions as well. This would be subject to data sovereignty, privacy and official information law constraints.

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

Free text box, no character limit:

Data on the adverse health outcomes resulting from consumption of certain foods or ingredients and the availability of these in the food supply (eg, ultra-processed foods).

Data on food supply (including sales data) and composition.

Data on how standards are interpreted, applied and enforced in the context of individual jurisdictions' food legislation.

Data on the impact of food regulation on nutrition outcomes (including on the burden of disease), metabolic risk factors, and diet-related health outcomes at a population level data and among First Nations/Māori and other populations in need. For example, information that show what is the contributing or potential or actual preventive effect of Code changes on these poor health outcomes for Māori.

Cultural perspectives data, including practicing research methodologies which prioritise indigenous world view (eg, Kaupapa Māori methods / Māori customary practice).

Data on the impact of the standards and Code on the aims/outcomes in s 18(1), which would include a long-term public health focus as well as a focus on the standards specifically.

The COVID-19 pandemic has shown the importance of using epidemiological evidence as a foundation for a public health response. This also applies to obesity and unhealthy diets: Implementing healthy food environment policies in New Zealand: nine years of inaction | Health Research Policy and Systems | Full Text (biomedcentral.com)

Nutritional epidemiology data. There is an ongoing need for scientifically robust, nutrition survey data, especially as detailed New Zealand specific food consumption data has not been collected for 15 years.

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:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Supporting the development of the Food Standards Code.

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. We need more information. In New Zealand, the term 'Statement of intent' refers to ex ante planning by departments and Crown entities – with a mostly financial focus. If this term is meant to be an explanatory note, like the note Parliamentary Counsel provides with bills introduced to the House,

this could be useful.

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:

It could potentially be of wider use to provide consistent, plain English explanations changes to standards for industry, consumers, Ministers and jurisdictions.

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

Along with other changes to be more responsive to indigenous cultures. However, indigenous people should be commissioned to write or co-develop the guidelines.

Please refer to this link on consultation with Māori: [Te Arawhiti - Crown engagement with Māori](#)

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:

Yes, while respecting domestic law boundaries. Collaboration in the form of interpretative information and acting as a conduit to share the jurisdictions' enforcement experiences and ways around enforcement challenges could be useful. It could also be useful to achieve improved public health and safety outcomes.

Section 13(1)(c) already provides that one of the Authority's functions is to 'develop guidelines to assist the interpretation of the Australia New Zealand Food Standards Code on its own initiative or in consultation with the States, the Territories and any other body or person that the Authority considers appropriate.' The paragraph could include 'enforcement.'

Component 2.4

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

Yes

Free text box, no character limit:

A legislative explanatory memorandum or note for each food standard change would both guide stakeholders and inform enforcement activities. This was raised at one of the stakeholder workshops in February 2024.

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 costs to FSANZ, Ministers and governments from industry obstruction of changes to the Food Standards Code which protect public health and safety. The discussion instead seems most concerned with costs to industry of delay.

Also, qualified benefits only refer to 'public confidence in the provision of safe food'. This ignores the outcomes in s 18(1) of the Act – specifically protecting public health as well as safety. There needs to be more clarity on what is meant by 'public health benefit.' Both short and long-term public health and safety should be considered.

Governments of Australia and New Zealand are stakeholders, but the assessment only applies to the food regulation system. Not considered are externalities - such as impact on health loss (details in Section 3), the impact on the health system, and the impact on other regulator's systems (eg, environmental and other systems administering social determinants of health).

The consideration of consumers is light (eg, it does not sufficiently identify effects on high need populations most affected by high fat, salt sugar and ultra-processed foods). In particular, the analysis should have identified the disproportionate effect of unhealthy foods on First Nations/Māori, Pacific, those living in high deprivation areas and other high need populations.

The analysis does identify that industry is likely to pass on regulatory costs to consumers. The risks to population health of unaffordable healthy foods should be seriously considered, and what measures could be adopted to alleviate industry passing on its costs via healthy, 'every day' foods. Cost recovery from 'discretionary foods', especially those with a Health Star Rating of <3.5, is preferable.

Further, the food supply in New Zealand is not supporting consumer choices that are consistent with healthy diets and good nutrition. When the Health Star Rating System was introduced 10 years ago, it promised to inform consumers of healthier food choices. However, only one-third (36%) of intended products have this front-of-pack label in Australia (the New Zealand results have yet to be published), and it is preferentially applied to healthier food categories. Also, nutritious foods need to be available, affordable and desirable:

<https://www.georgeinstitute.org/media-releases/food-industry-failing-to-meet-governments-health-star-rating-targets#no-back>

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

Free text box, no character limit:

Māori need to speak to this, through engagement and questions, and Ministry for Primary Industries (MPI). However, please refer to the Wai 262 claim for cultural context: Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released | Waitangi Tribunal

While this decision was released in 2011, the perspectives discussed are still relevant and identifies the need to:

'Address IP issues related to indigenous flora and fauna Māori IP and data is protected, including through counterfeit monitoring, strengthened plant variety rights and clarification on bioprospecting policy.'

The future of Aotearoa New Zealand's food sector: Exploring demand opportunities in the year 2050 (mpi.govt.nz)

What are the current delay costs to industry?

Free text box, no character limit:

The IA refers to delay costs to industry in the application process due to inefficiencies. The analysis also assumes delay costs to industry from timing of the proposals but the IA does not adequately explain these.

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

Yes

Free text box, no character limit:

From a public health perspective, the state of the food supply in New Zealand is concerning. Key findings we draw to your attention in this regard are in 2 reports:

- 2023 State of the Food Supply Report: A Five-year Review (The George Institute): Food industry failing to meet Government's Health Star Rating targets | The George Institute for Global Health

- State of the Food Supply: New Zealand 2019 (INFORMAS): State of the Food Supply New Zealand 2019 | INFORMAS.

Further, as the 2022/23 New Zealand Health Survey results show, Māori and Pacific people experience the disproportionate burdens of diet-related disease, disability, mortality, and morbidity compared to non-Māori/ non-Pacific peoples. This leads to greater government healthcare costs and increasing/compounding inequities. At least one in 3 Māori and Pacific children live in households where food runs out. Few New Zealanders adhere to healthy eating advice and malnutrition is present: Food Hardship and Early Childhood Nutrition Report (msd.govt.nz)

The health, social and economic consequences of limited access to nutritious, affordable kai, and too much access to cheap, unhealthy food and drinks, are very significant. High body mass index and dietary risks are responsible for 17.5% of health loss in New Zealand, and together they make the largest contribution out of all the risk factors to the life expectancy gap for Māori and Pacific peoples. The direct healthcare costs of treating diseases attributed to high body mass index are estimated to be \$2 billion per year, or about 8% of the Vote Health budget, with indirect costs estimated to be a further \$4 to \$9 billion dollars, equivalent to \$2,000 per New Zealander per year:

<https://hapai.co.nz/sites/default/files/Economic-impact-of-Excess-Weight-in-NZ-15-Nov-2021.pdf>

In addition, the cost of treating dental diseases in New Zealand is over \$1 billion per year:

https://cdn.who.int/media/docs/default-source/country-profiles/oral-health/oral-health-nzl-2022-country-profile.pdf?sfvrsn=485f343f_7&download=true

Costs and benefits according to Māori people are likely to be approached holistically, taking account of costs to te taiao (environment), whānau (social), climate and other wider determinants.

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

Yes

Free text box, no character limit:

An assumption made for both Option 1 and 2 is that 'Public health benefits derived from one standard have been quantified to be AUD \$1.33 million (NZD \$1.42 million) per annum using nutrition labelling as a proxy for the public health benefits of food regulation.' The assumption is this will grow by the average population growth rate of 0.76% per annum. Nutrition labelling is not an effective proxy for the Code as a whole, which largely benefits industry. The analysis does not sufficiently consider health and economic costs (including downstream) to governments, consumers and communities of unhealthy or unsafe foods due to ineffective regulation.

Public health will benefit from stronger upstream food regulation to prevent tooth decay, non-communicable diseases, and long-term conditions, particularly among high need populations and to reduce the burden on the health sector. This will also have the benefits of increased productivity and increased quality and length of life. In effect this means prioritising nutritional needs of children, and FSANZ focusing more on food marketing (eg, restrictions on unhealthy food marketing, particularly to children, to change what people eat). It also means more effective front-of-pack nutritional guidance, including warning labelling which resonates with a broader cross-section of society. To protect public health, FSANZ could also promote a move away from wasteful, expensive foods, public food procurement that incentivises healthy options and disincentivises unhealthy foods, and food reformulation to meet nutritional targets. Aspects of these things are within FSANZ's ambit of responsibility.

There is detail about administrative costs, and much less about the big aggregates (eg, the impact of an outbreak). It is unclear why this approach has been taken.

Section 6 - Net Benefit (Option 2)

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

Yes

Free text box, no character limit:

There is no consideration of the costs of delay caused by industry in progressing proposals of public health benefit (eg, 10+ years to get pregnancy warning labels). There is an excessive cost to the public if proposals take a long time to process.

As with Option 1, the analysis needs a greater focus on public health, consumers, other regulators, and high need populations. It also needs a greater focus on outcomes, including s 18 aims.

The analysis recognises the risk of low-risk pathways leading to more unsafe foods entering the market, posing to a risk to public health and safety. However, it insufficiently considers the costs to the health system, and other regulatory, systems if public health benefit is not clearly articulated and embedded in food regulation. The analysis should have been clearer about its non-inclusion of the wider health and other impacts.

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

Yes

Free text box, no character limit:

New Zealand health data provided for Option 1 is also likely to apply to Option 2, unless FSANZ systems significantly change to protect public health with a renewed focus on preventing non-communicable diseases.

Youth activist data from the United Kingdom such as this: [WEBSITE__Bite_Back_Manufacturers__high_res.pdf](#) (contentfiles.net)

Data on the global health, productivity and environmental cost of diets high in fats, sugar, salt and ultra-processed foods follows:

Food System Economics Commission (FSEC):

'The global adoption of diets high in fats, sugar, salt and ultra-processed foods would increase the number of obese people worldwide by 70 percent to an estimated 1.5 billion in 2050, or 15 percent of the expected global population. Note that the direct medical costs of treating the health consequences of overweight and obesity have been estimated by others to rise from 600 billion USD today to almost 3 trillion by 2030 already.'

[FSEC-Global_Policy_Report.pdf](#) (foodsystemeconomics.org)

'Health costs, which FSEC estimates to be at least 11 trillion USD. The economic costs of ill health due to food systems are measured through their negative effects on labour productivity. Those are driven by the prevalence of non-communicable diseases, including diabetes, hypertension, and cancer which can be attributed to food. A large share of this burden is born by people living with obesity, currently estimated at 770 million people. FSEC's health costs also include a lower bound figure for the productivity costs of undernutrition, currently affecting 735 million people.'

EAT-Lancet Commission:

'Healthy diets remain unaffordable for 3.1 billion people (FAO et al. 2022), and obesity and other non-communicable diseases associated with unhealthy diets have been rising worldwide over the past few decades. The risk of food becoming less affordable for the poorest needs to be addressed head on: Food in the Anthropocene: the EAT-Lancet Commission on healthy diets from sustainable food systems

- The Lancet

'Environmentally sustainable production throughout the food system. Food systems contribute significantly to total GHG emissions, biodiversity loss and environmental pollution. They account for about a third of global GHG emissions, with conversion of land to agriculture and agricultural production itself responsible for much of that amount, notably in the form of methane emissions from ruminant livestock and rice production. Emission intensities also vary significantly within product categories, depending on production practices and contexts.'

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

Yes

Free text box, no character limit:

The analysis claims that option 2 is more cost-effective in delivering public health benefits than option 1, but there is insufficient explanation to back this claim up.

The analysis should have considered the fact that in New Zealand (and Australia) there is a real problem of obesity which is in turn linked to non-communicable diseases and chronic conditions such as heart disease, stroke, osteoarthritis, cancers, type 2 diabetes, mental ill-health, multiple morbidities and premature death. In missing this focus, the analysis also ignores the heightened effects of ill health among high need populations (eg, In New Zealand, Māori, Pacific, high deprivation communities, disabled people).

The analysis about potential additional burden for industry in making applications of inadvertently broadening FSANZ's public health responsibilities is unhelpful and is the wrong risk to give prominence. This is because the Act needs strengthening to adequately give effective to its existing primary objective of protecting public health and safety.

This statement is not persuasive or clear: 'Food Ministers would have greater capacity as decision-making to ratify certain changes to food standards could be delegated to departmental officials.'

Delay in processing proposals has not been quantified under option 2.

There is insufficient reasoning supporting the assumption that each standard review results in a public health benefit.

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:

Not in isolation from context. For example, parts of the industry promote highly processed foods as a solution for hunger and economic stagnation. However, specific populations experience inequitable impacts in terms of resulting health outcomes. These include people living in high deprivation areas, disabled and Māori and Pacific peoples.

To protect public health, the Ministry of Health advises New Zealanders to enjoy a variety of nutritious, less processed foods every day (ie, foods low in saturated fat, salt and sugar from 5 food groups). Healthy food unavailability and unaffordability are barriers to consumption.

The characterisation of option 1 as do nothing with current problems and option 2 as the package of solutions, predetermines the outcome the analysis reaches. Yet, legislative changes could be made without adopting the whole package of proposals in option 2. Some of the proposals in option 2 are possible now or under option 1.

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

No

Free text box, no character limit:

From a public health perspective, the analysis mischaracterises some of the subproblems and in so doing fails to give sufficient prominence to the primary objective of protecting public health and safety.

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:

Both the risk-framework and new pathways could impact short-term health outcomes (food safety, disease outbreaks) and long-term health outcomes (chronic conditions). The analysis should have considered the likely impacts of the framework and new pathways separately and in more detail.

There should have been a proposal in option 2 to apply cost savings to proposals and reviews and to impose statutory timeframes on proposals and standard reviews.

FSANZ wishes to streamline processes (saving costs to industry and itself) and use the savings to expand some of its functions (not necessarily protecting public health). To do this it needs to both cut its processing costs and seek further funding.

Option 1 (status quo) does not (at least as it is characterised in the IA) facilitate expansion and so the analysis reaches the conclusion that option 2 delivers higher net present value than option 1.

It is also easy to say that option 1 does not solve current problems so option 2 is preferred. This does not take account of the fact that option 2 could generate new problems.

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

No

Free text box, no character limit:

The analysis mischaracterises some of the subproblems and does not give sufficient prominence to the primary objective of protecting public health and safety.

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:

Reframe the discussion so that it is around diet and unhealthy weight and monitoring nutrition impacts, better aligning with s 18 outcomes and government policy on dietary guidelines.

Consider more:

- the cumulative exposure of dietary risk factors over time based on food consumption data, as it currently does for some additives, such as artificial sweeteners
- evidence on the adverse health outcomes resulting from consuming certain food or ingredients and the availability of these in the food supply (eg, ultra processed foods)
- environmental science, agricultural science, health and nutrition science in building the evidence base
- enabling consumers to make food choices in support of national dietary guidelines, by improving alignment of the food supply with dietary guidelines – such as through food reformulation.

Monitor food environments within the Code's ambit, such as food marketing to children, the voluntary Health Star Rating System, the accuracy of health claims, whether the warning labelling is effective and for whom, and reformulation targets (eg, folate, sugar, sodium, iodised salt). Also monitor and evaluate more broadly the health impacts of food standards in accordance with government dietary guidelines and recommendations.

Include the impacts of food regulation on high need/priority populations.

Reiterate the importance of regular nutrition/consumption surveys so that data is available for setting and varying foods standards in an evidence-informed and timely way. A food levy could support ongoing national nutrition surveys across both countries to help inform the work of FSANZ, including priority setting.

Alternatively, our 2 governments could commit to national nutrition surveys to ensure FSANZ has the data they need to prioritise and monitor the food systems in both countries.

Also needed are snapshots of what is the effect of including a class of food ingredient, such as emulsifiers, on the market and on existing products, consumers and public health.

Other comments

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

Yes

Free text box, no character limit:

Thank you for the stakeholder workshops (useful) and opportunity to comment.

The 20 components in option 2 are presented as synergistic which means if anything drops out there will be flow on effects to other components and cost implications. Therefore, the present net value would then be recalculated. Also, several of the 20 components are exploratory in nature rather than firm proposals for change. These things mean the final proposals may look quite different to this IA.

The IA is broad in scope, lengthy and complex and the submission questions overlapping which places a considerable barrier and resource burden on stakeholders wishing to comment meaningfully on. This, in combination with the relatively short timeframe for submissions (even with an extension), means that there is likely to be a relatively small number of submissions by public health groups and consumers on the proposed concepts.

In future, it would be more consultative and kinder on stakeholders to:

clearly identify which components are the most important, without which the preferred option could not proceed and why
reduce the number of multiple and overlapping questions on the same issue.

Given amendments to the Act are intended to last for 3 decades or more, a broader approach to the scope of the changes - recognising One Health drivers, and environmental sustainability (informed by indigenous perspectives of the holistic nature of health and the environment) would also have been advisable.

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: