

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:  
Emlyn Simmie

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::  
Healthcare Product Specialists

Which sector do you represent?

Other (please specify)

Other: :  
Food Regulatory Consultant

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::  
[REDACTED]

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

Free text box, no character limit:

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

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

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

Prefer not to respond / I don't know

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

Free text box, no character limit:

## 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?

Prefer not to respond / I don't know

Additional comments (optional):

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?

Prefer not to respond / I don't know

Additional comments (optional):

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

Prefer not to respond / I don't know

Additional comments (optional):

#### Component 2.1.2

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

Prefer not to respond / I don't know

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

Free text box, no character limit:

#### 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:

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

Prefer not to respond / I don't know

Free text box, no character limit:

### Component 2.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

### Component 2.2

#### Component 2.2.1

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

Yes

Free text box, no character limit:

HPS supports the notion to include risk based frame work in the handling of proposals and applications with in the Food Standard Code (FSC).

In HPS view, a risk based approach presents an opportunity to the food industry to have particular applications fast tracked through the system "if" the application is considered low risk, has a previous approval from an international established food regulatory body, or uses technology, processes, ingredients that are generally considered low risk.

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

Free text box, no character limit:

HPS agree with those examples provided in Appendix D of the Impact Analysis.

HPS also recommends that FSANZ utilise existing approvals for substances (for example) from international established food regulatory bodies such as Codex, JECFA, USDA, EFSA, UK Food Standards Agency, Health Canada etc. This could help to fast track proposals and applications which would promote access to ingredients, processes, technology, regulatory reforms and health claims. In HPS view, this has the opportunity to directly support the Australian food industry and promote research and development in this space.

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

Positive

Free text box, no character limit:

HPS support risk based framework, assuming that a risk based framework encourages the fast-track of applications for the food industry, reduces time required for FSANZ to provide assessment, and is not a bottle neck inhibiting growth and development in the food sector.

## 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:

HPS support risk-based assessments from international bodies for ingredients, health claims, and technology, assuming the risk based assessments fast tracks applications for the food industry, reduces time required for FSANZ to provide assessment, and is not a bottle neck inhibiting growth and development in this space. In HPS view, the risk based approach is likely to promote innovation by increasing access to ingredients, health claims which promotes innovation in the food sector.

For example in P1010 - Consultation paper two - Nutrition and Health Claims, FSANZ proposed to adopt those authorised EU health claims as pre-approved health claims for sports foods. In HPS' view the adoption of the EU sports health claims, enables the sports food sector further improved compliance, while also promoting further opportunities for innovation and development.

HPS note some risk resides that different jurisdictions may fundamentally classify food product differently, i.e. formulation meal replacements, sports foods or electrolyte products. Thus, while ingredient assessments may be easy to systematically adopt, food classification assessments may require further evaluation by FSANZ.

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

Yes

Free text box, no character limit:

HPS agree with the proposal, see comments in Component 2.2.2 above.

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Yes

Free text box, no character limit:

HPS agree with the proposal, see comments in Component 2.2.2 above.

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

Yes

Free text box, no character limit:

HPS agree with the proposal, see comments in Component 2.2.2 above.

HPS notes that the referenced harmonised bodies are strictly western countries, HPS encourages FSANZ to look at those countries closer to home within the Asia Pacific region as well as the those named in component 2.2.2 (page 52 of the Impact Analysis).

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

Positive

Free text box, no character limit:

HPS supports the introduction of new pathways to amend food standards via a harmonised approach.

In HPS view, this offers the Australian food industry greater access to new ingredients and supply chains which supports innovation within the Australian food sector.

Further this also provides greater clarity for businesses developing products across multiple borders between AU / EU / USA / UK / Canada.

Overall HPS see the introduction of new pathways as a positive change to the FSC.

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

Prefer not to respond / I don't know

Free text box, no character limit:

### Component 2.2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

### Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Yes

Free text box, no character limit:

In HPS view, it is likely that some of this information already exists within the Food Industry. HPS are aware of a number of raw material suppliers of traditional food ingredients (such as desert lime, Kakadu plum, Davidson plum, wattle seeds etc...) that promote the sale of their ingredients with analytical testing attached.

HPS encourage FSANZ to publish and list of traditional foods and ingredients and include such foods / ingredients within the Australian Food Composition Database, enabling easy access to the data for immediate use by the food industry.

In HPS experience, we have note a trend in brand (and consumer) awareness of Australian traditional foods, HPS work with a number of clients who currently are using a variety of Australian native raw materials in a variety of products available within the food industry. If nutritional and compositional assessment of traditional foods was made available to the public (and regulatory experts such as HPS), HPS believe this would absolutely increase innovation and use of traditional foods by the food industry as a whole.

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:

Yes please see response to component 2.2.4 above.

The development of guidance materials and safety assessments of traditional foods and traditional ingredients will support the safe use of traditional foods by the Food Industry.

## 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:

In HPS view, FSANZ undertaking on-going reviews of the FSC, food standards enables the Code to be up to date with the current mark a) use of the code, b) market trends and c) food industry compliance.

For example, Standard 2.9.4 Formulated Supplementary Sports Food (FSSF), in HPS view is outdated, the use of Division 3 Particular formulated supplementary sports foods (i.e. High carbohydrate supplement, Protein energy supplement, Energy supplement) has no bearing on the products being produced by industry and purchased by consumers. The specific sports foods (per standard 2.9.4 - division 3) are not produced by industry as the consumer purchasing FSSF products has no interest or desire for a high carb supplement / protein energy supplement.

A low carb high protein supplement option would be more appropriate from consumer preference as well as promote healthy food choices for consumers.

In summary, HPS support the notion for FSANZ to undertake regular reviews of the FSC.

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Component 2.2.6

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

Yes

Free text box, no character limit:

HPS support the notion that the Code of Practice and regulatory guidelines are an asset to the food industry to ensure the intentions of the Food Standard Code (FSC) are accurately implemented by industry. In HPS view, this reduces the misinterpretation of the FSC and reduces ambiguity of the FSC while promoting food compliance.

Currently Industry relies on other regulatory bodies within AU such as the ACCC to assess compliance risk where no clear set guidelines are in place.

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:

HPS have experienced ambiguity within the FSC specifically Standard 2.6.2, Division 4 Electrolyte drinks and electrolyte drink bases. Per 2.6.2-16(2)(a) the food has an average osmolality of 200–340 mOsmol/kg.

Osmolality is not defined within the FSC, the calculation to determine osmolality is not provided. HPS note other calculations and definitions of a similar nature are detailed within the FSC.

Additionally, in HPS's view, labelling requirements in Standard 2.9.4 could be improved, Standard 2.9.4—7 Prohibited representations states: "Unless specific permission is given in Division 3, the label on a package of formulated supplementary sports food must not include an express or implied representation that relates any property or proposed use of the food to enhanced athletic performance or beneficial physiological effects."

The use of the prohibited representation (2.9.4-7) is unclear in its intended use, the industry seeks clarification around its intended use and proposal. In

HPS's view the prohibited representation does not directly apply to the Food Standard code within the context of Standard 1.2.7 and Schedule 4 Nutrition, health and related claims. The industry is unclear if the prohibited representation applies to claims that are deemed therapeutic in nature or applies to those health claims reflected in Standard 1.2.7 and Schedule 4.

Should the FSC provide a code of practice or guideline in relation to St.2.6.2 and St 2.9.4, it would ensure both brand compliance and efficacious product for consumers. This too would aid enforcement agencies in surveillance of non-compliant products.

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:

Yes, see comments above, component 2.2.6

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

Positive

Free text box, no character limit:

HPS agree with the notion that introducing Code or Practice and guidelines would be positive for the food industry. See comments above, component 2.2.6

## Component 2.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Component 2.3

### Component 2.3.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

### Component 2.3.2

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

Negative

Free text box, no character limit:

HPS reject the idea that removal the expedited pathways for applications would have a positive impact on the food industry. In HPS experience the use of an expedited pathway encourages innovation, growth and development of the food industry. Removing the expedited pathway has the potential to inhibit growth of the Australian food sector and be a burden for industry.

### 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:

In theory HPS supports the notion of an industry wide levy for those top 5000 food businesses in Australia.

However, HPS question how FSANZ will determine which companies will meet the criteria for the top 5000 food businesses in Australia?

In HPS view there are many business that are not solely food business who also sell cosmetics, medicines, and other commodities. Additionally, how will FSANZ differentiate between food raw material suppliers and those businesses who sell finished product. HPS urge FSANZ to take this into consideration.

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

In HPS view compulsory fees to "all applications" has the potential to reduces opportunities for innovation and growth for small to medium food companies especially considering the increases financial pressures for those small food businesses / start ups in the food space. We see this as a burden for industry.

The requirement to outlay additional funds and fees for applications could reduce innovation and development within the Food sector.

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

Prefer not to respond / I don't know

Free text box, no character limit:

#### Component 2.3.4

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

No

Free text box, no character limit:

In HPS view, imposing a levy for food recalls adds additional financial burden to business already dealing with the financial pressures of recalling product at huge financial cost and stress.

In HPS opinion, this also has the potential to add risk to consumers, as some companies may choose not to notify FSANZ if a recall is needed, if additional fees for a product recall are imposed.

HPS see this as a potential risk for consumers and a large burden for industry.

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Annual Levy

Free text box, no character limit:

In HPS view, imposing an annual levy to jurisdictions is a fair approach to support the food industry.

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

## Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Component 2.4

### Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

### Component 2.4.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

### Component 2.4.3

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

Yes

Free text box, no character limit:

HPS agrees with the notion for FSANZ to assume the role as a database custodian in relation to information held by FSANZ such composition / nutrition / food safety databases, as well as the Health Star Rating (HSR) composition information. HPS encourage FSANZ promote access to such data to the wider regulatory community, such as food regulators, enforcement agencies and food consultants (such as HPS).



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

Free text box, no character limit:

#### Component 2.4.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

#### Component 2.4.5

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

Yes

Free text box, no character limit:

HPS support the introduction of Statement of Intent into the FSC. In HPS view the inclusion of such statements ensures that the FSC are correctly interpreted and implemented by the Food Industry, this too helps food businesses ensure compliance.

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:

HPS agree with the notion that Statements of Intent benefit the food industry as well as enforcement agencies. For example, HPS have encountered inconsistent interpretation of legislation by DAFF in their review of imported product.

#### Component 2.4.6

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

Yes

Free text box, no character limit:

HPS strongly support the notion for FSANZ to develop, update and maintain industry guidelines. In HPS view this could positively impact both food industry, food consultants (such as HPS), food enforcement agencies, ensuring consistent interpretation of the FSC are implemented by the Food industry. This would result in improved compliance of food products, as intended by FSANZ.

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

Prefer not to respond / I don't know

Free text box, no character limit:

#### Component 2.4.7

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

Prefer not to respond / I don't know

Free text box, no character limit:

#### Component 2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Section 6 - Net Benefit

### Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

### Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Section 8 - Best option and implementation

### Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Other comments

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

Prefer not to respond / I don't know

Free text box, no character limit:

## Privacy and Confidentiality

Do you want this submission to be treated as confidential?

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: