

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:  
Dr Michael Lindsay

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::  
Department of Health, WA

Which sector do you represent?

Government  
  
Other: :

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:

Point of clarification regarding Sub-problem 3 – inconsistencies are unrelated to the FSANZ Act, rather associated with the respective food legislation and agency delineation of food regulatory functions within some States and Territories. The Food Acts adopted in Australian jurisdictions, while largely aligned to the Model Food Provisions, have been subject to the political process with each jurisdiction in the process of enactment, as well as where there has been a community need that food laws have been identified as the relevant instrument to address this need. This has resulted in some variations across the Food Acts between States and Territories. The example provided about eggs illustrates this. Again, this is not a FSANZ Act issue, as the inconsistency sits firmly with the States and Territories.

Additionally, in some States, such as Victoria (in which the example in the FSANZ Act IA is used as an example), has multiple agencies involved in food regulation, whereas in a State like WA, the responsibility for the WA Food Act 2008 (WA Food Act), is afforded to the CEO of the DOH. While local government is an enforcement agency under the Act, overall responsibility for the Food Act sits with the DOH.

## 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):

The definition of 'protection of public health and safety' within the Act could be clarified to be in line with the current policy guidance.

...'all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short-term or long-term, including preventable diet-related disease, illness and disability as well as acute food safety concerns.' (p49, Impact Analysis Paper)

The World Health Organization defines public health as 'the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society'.

The definition of public health used by FSANZ reflects that of the leading global health organisation, highlighting the words 'prolonging life and promoting health through the organised efforts of society'. The definition is fit for purpose for demonstrating the role of the food system in protecting and promoting the health of all Australians and New Zealanders. The definition should be included in Section 3. of the Act (Object of Act) because the promotion of long-term health is absent from this section.

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

Yes

Additional comments (optional):

The definition (above) is aligned with Section 18. of the Act, that is, point 1. and point 2(a), and are prefaced as the 'High Order' Policy Principles for each Policy Guideline.

1. The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:
  - (a) the protection of public health and safety
  - (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
  - (c) the prevention of misleading or deceptive conduct.
2. In developing or reviewing food regulatory measures and variations of food regulatory measures the Authority must also have regard to the following:
  - (a) the need for standards to be based on risk analysis using the best available scientific evidence.

The High Order Policy Principles together with the specific content of each policy guideline is integral for ensuring public health is the foundational element of the review and assessment of all applications and proposals.

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

Positive

Additional comments (optional):

Having the definition of public health (above) included in both Section 3. and 8. would importantly serve to strengthen the element of public health within the Act.

#### Component 2.1.2

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

No

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

Free text box, no character limit:

The issue is not about how FSANZ communicates for these guidelines, but rather that the Food Regulation Agreement (as amendment) 3(e) requires FSANZ to 'have regard to' the Ministerial Policy Guidelines, it does not require FSANZ to comply with these guidelines. Noting that all Ministerial Policy Guidelines have undergone full public consultation and been subject to the Office of Impact Analysis (formally Best Practice Regulation) prior to being enforced by Food Ministers.

The example provided illustrates this, such that the Ministerial Policy Guidelines for Infant formula and infant formula products, states (j) "Substances subject to pre-market assessment for use in infant formula and follow-on formula should have a substantiated beneficial role in the normal growth and development of infants or children, or a technological role, taking into account, where relevant, the levels of comparable substances in breastmilk. A substance's role in normal growth and development is substantiated where there is appropriate evidence to link the physiological, biochemical and/or functional effects of the substance to specific health outcomes for infants, in infancy or childhood. Particular caution should be applied by the Authority where such links are less clear". In recent times, there have been applications for certain nutritive substances that have been approved by FSANZ, where the FMM raised concerns that Specific Principle (j) of the Ministerial Policy Guidelines did not seem to have been demonstrated by the Applicant (s) and within the FSANZ assessment and approval process.

A recommended option would be for FSANZ to be required to comply with Ministerial Policy Guidelines, rather than just have 'regard to' these Guidelines.

In summary, FSANZ already communicate the reasons for their decisions on food regulatory measures. However, these reasons are not always consistent with the Ministerial Policy Guideline in place for a standard. This is where the point of disharmony exists.

### 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:

DOH supports the Act reflecting modern language that is consistent, appropriate, and inclusive.

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?

Not Answered

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:

Adoption of a risk-based framework would likely provide FSANZ with more flexibility in handling changes to the Food Standards Code.

However, in doing so, care would need to be exercised in establishing this framework, to ensure the protection of public health and safety is maintained.

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

Free text box, no character limit:

Consideration of this requires further canvassing and should be subject to full policy development and consultation process.

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

Neutral

Free text box, no character limit:

State and territory enforcement agencies already utilise a risk-based framework for the classification of food businesses, based on the risk of the food and the handling activities within the operation of the food business. This enables enforcement agencies to appropriately allocate time and resources to those businesses where there is the highest risk. The Model Food Provisions are outcome based, focused and to implement legislation, via the Food Acts in various jurisdictions, how risk is managed throughout a business is as important as the inherent risk of the food itself.

For FSANZ the issue is broader: not only is there the risk of the food, in terms of food safety a consideration, and the activities associated with producing the food, but also there are risks associated with the intended population groups for the food, the overall contribution the food (group / commodity) makes to overall human health and consideration of how the food falls within or outside of broader public health policies and objectives. In other words, the risks FSANZ are required to consider in prioritising its work, are complex. Additionally, there are Trade and international agreements and obligations that FSANZ must consider.

## 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 accepting risk assessments from overseas jurisdictions is considered reasonable in principle. It is important however for the dietary consumption/patterns of the Australian and New Zealand population, including vulnerable population groups, to be considered in the context of overseas risk assessments. Consumption patterns between countries can be significantly different. Risk assessments should only be accepted from trusted partners with the appropriate level of scientific expertise, in line with condition set down by FSANZ in regulation and/or regulatory policy. In addition, care needs to be taken not to adopt risk assessments where they may be vested interests such as market expansion to other countries. There may be differences in dietary patterns between Australia / New Zealand populations overseas countries. Care would need to be exercised in blanket recognition of international standards for this reason.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

It may streamline processes and reduce the resource load for FSANZ to undertake other aspects of the standard development process. However, there may be differences in dietary patterns between Australia / New Zealand populations overseas countries, so the risk may not necessarily be the same. Care would need to be exercised in blanket recognition of international standards for this reason.

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:

While Appendix D provides a case study example of what would constitute 'low risk' and shortens the timeframe in which FSANZ would consider an application falling within this category. It is unclear as to how this would reduce the impact on FSANZ resources. Furthermore, care needs to be taken to ensure that public health and safety is not compromised, in an endeavour to improve efficiency.

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:

Not in a position to comment in the absence of this work being explored more fully and subject to its own policy development and public consultation process.

Side note: Removal of the premarket assessment and approval process for high-level health claims, is inconsistent with the Ministerial Policy Guidelines and any decisions to this effect would require FMM decision.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

No

Free text box, no character limit:

The current decision-making arrangements are clear and transparent with all FSANZ notifications to FMM requiring a decision within the prescribed timeframes.

It would be useful to further understand the FSANZ challenges both administrative and technical with the current arrangements and how these impact on business delivery and organisational outcomes.

There are simple examples such as minor editorial amendments to the Code where approval by the FSANZ Board or Ministers is not necessarily required and could be delegated to other suitable decision makers. The principle of a risk-based approach to decision making is best practice and there is an opportunity to explore further how this may be included across the Food Regulatory System including at the highest level for FSANZ/FMM. It is however important to maintain rigor in decision-making and ensure processes for risk categorisation are well understood and agreed.

It should be noted that there is likely to be a degree of variation across jurisdictions for their risk appetite. Changes in current arrangements will need to have some flexibility for jurisdictions also in that those who retain a lower risk appetite can seek a higher level of authority for decision making.

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

Free text box, no character limit:

Further work is needed to explore risk factors, but these for example could include – public health risk, evidence available for assessment, vulnerability of the population impacted by the decision, new technology/genetic modification.

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

Neutral

Free text box, no character limit:

From a WA perspective any proposal would still need to be comprehensively assessed and a briefing developed for the decision maker.

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

Free text box, no character limit:

Consistency with similar levels of decision making in other health areas and departmental delegation schedules.

### Component 2.2.4

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

Yes

Free text box, no character limit:

A one-off investment by FSANZ to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments which would facilitate entry of traditional foods to market.

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:

FSANZ development of further guidance materials on how traditional foods can be assessed for safety could assist entry of traditional foods to market. However, the main limitation of these type of documents would need to be taken into consideration, which is the fact that accurate food safety assessment requires a case-by-case analysis. To ensure that a food product is safe, it may need to be tested for various biological and chemical contaminants like oxalic acid, cyanogens, saponins, alkaloids, etc. In cases where a particular compound in assessed food is potentially harmful (e.g., natural toxin) a method of traditional versus modern processing, the quantity and frequency of intake would also determine the safety status of the product. Finally, large food businesses would not have a problem to pay and to follow toxicologist advice, but it would be a medium and a small food business who would struggle to validate individual safety status of their product(s).

In conclusion, developing guidance materials would be beneficial as an interim solution, however, the ultimate goal should be to update Food Standards Code to be able to address various current challenges related to Australian traditional foods, such as:

- o Plant identification issues, which would be helpful, particularly in case of mixtures of species, where some of them may have toxic properties (e.g., Solanum species).
- o It should be stated that Indigenous preparation of the food had involved extensive detoxification processes. Therefore, Food Safety Programs (FSP) should be considered for individual species, that should address handling and processing hazards.
- o Labelling requirements should be considered, that may include botanical and common name with suggestions for suitable quantities used per meal.
- o Biological contaminants (e.g., fungal pathogens like aflatoxins).
- o Allergenic properties, and
- o Chemical pollutants (e.g., heavy metals).

### 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:

FSANZ should be adequately resourced to undertake regular, holistic reviews of food standards. However, the timeframe in which a holistic review is required would need to be evidence-based, reasonable and not result in uncertainty in the regulatory environment for food businesses and/or regulators.

In addition, the requirement for a standard to be reviewed should be based on need i.e., the availability of evidence to support the review.

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

Yes

Free text box, no character limit:

In considering, a requirement of the FSANZ Act to undertake regular holistic reviews of food standards, it is important at a practical level that the timeframe in which a review of a standard is required matches FSANZ's capacity and resources.

It would be important in including provisions for reviewing a food standard, that the period of time by which, or after which, a standard must be reviewed, be achievable and accommodate for earlier review of food standards based on risk and evidence. In the WA Food Act 2008, the requirement for review of this legislation is 'after five years', rather than by a certain date.

Conditions of the need for a review should also be a consideration.

### 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:

A Code of Practice, unless adopted under the Food Standards Code, or within State and Territory Food Acts, is problematic for regulators, from a compliance and enforcement perspective. While a Code of Practice may assist industry with adopting a best-practice approach to implement the Food Standards Code, these do not replace the need for the actual requirements to be specified in the standard of the Food Standards Code. Regulators require this to be the case, for compliance and enforcement purposes. While many food businesses may adhere to a Code of Practice, there are always some that will not follow this, and as such regulators would require key elements and criteria within a food standard, in order to require compliance, and take enforcement action, if or as needed.

On the other hand, the user guides previously produced and published by FSANZ, were a well utilised tool for both food businesses and regulators / enforcement agencies. These provided practical, relevant examples of how the components of a food standard could be applied in varying and real circumstances.

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:

Codes of Practice unless adopted under a legislative instrument, are difficult for regulators to require food businesses to comply with, and even more difficult to enforce.

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

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

Neutral

Free text box, no character limit:

The Food Regulation System should cater for, and support, Australian and New Zealand food businesses of different sizes (small, small – medium, as well as large businesses) with a consistent framework in which to operate. For example, not all interests of the food industry are represented by peak bodies such as the Australian Food and Grocery Council or the New Zealand Food Grocery Council.

Often it is larger end of the food industry that is involved, supports, and develops Codes of Practice, and this is not always in the best interest of smaller food businesses. The smaller food businesses, of which there are many within Western Australia, may lack the capacity and resources to be involved, or even apply an industry-agreed Code of Practice.

Should industry develop and operate under Codes of Practice, this would certainly add value to the implementation process of a food standard, however, care must be taken to ensure that the specific requirements applying to a food / food business / process, remains within the Food Standards Code.

## Component 2.2

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

Yes

Free text box, no character limit:

The Department of Health, WA is supportive of a user guide approach to providing information to support the implementation of a food standard. This way the relevant requirements remain within the food standard itself, and the user guide, acts as a tool to further support consistent application and implementation of the standard's specific requirements.

## 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:

The parameters outlining the compositional requirements of the FSANZ Board (116) could be reviewed to provide greater expertise in the following areas:

- public health/public health nutrition,
- behavioural science, and
- the law (food law, risk analysis & management, ethics).

Currently, the board (except for the Chair, Consumer NZ member and CEO) has five members with industry experience, with three of the five having a strong dairy industry background. There are three academics of which one also has a strong dairy focus. There are two board members with public health experience, and only one with public health nutrition expertise. There is no dedicated board position representing New Zealand or Australian first peoples. The WA Department of Health supports a review of the compositional requirements of Board members to include greater public health nutrition expertise and/or behavioural science expertise and consideration of a dedicated Indigenous board member position.

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:

The current nomination process ensures a skills-based board and allows experienced persons to be nominated to the Board. When nominating new members, having the Minister consider advice from the Board Chair about the current skill mix of the Board membership will minimise any skills gaps and inform the appointment decisions. Having clearer parameters around the nomination process for board positions 116(c), 116(ca) and 116(f), could support better representation of public health nutrition expertise.

The WA Department of Health does not support the process of an open market for Board representation, given the suitability of the current system and the cost to implement an open market system.

### Component 2.3.2

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

Neutral

Free text box, no character limit:

Potentially it would allow other food companies to 'catch-up' with the application, in terms of having a similar 'ingredient / substance' ready for market. If FSANZ received two similar applications, but one before the other, it is unclear how this would impact on the exclusivity period applying under certain circumstances / conditions.

### 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:

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:

Fees (levy rate) would need to apply to all applications and be proportionate to size and generated revenue of the food business, to make this equitable to smaller enterprises.

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 comment

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

Positive

Free text box, no character limit:

It would support FSANZ resources to enable the application to be progressed in a reasonable and timely manner. Remove priority afforded to 'paid' applications as per the status quo arrangements in the FSANZ Act, which would make it a more equitable system of considering applications.

However, fees (levy rate) would need to apply to all applications and be proportionate to size and generated revenue of the food business, to make this equitable to smaller enterprises.

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

Yes

Free text box, no character limit:

Newer technologies, food production processes and areas of innovative food science for which the regulatory framework applicable is not clear, and the safety and suitability for all population groups in the community require risk assessment. As an example, the cell-based / cell-culturing of food.

### 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:



WA is not in favour of imposing a food recall coordination levy to support FSANZ to rebalance its workload priorities by addressing resourcing pressures.

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:

WA does not support a levy for this activity.

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

No

Free text box, no character limit:

The FMM asks FSANZ to raise a Proposal where there is a public health and/or food safety issues arising within the Australia and New Zealand population, where intervention by way of amendment to a food standard would assist in managing the issue and have a net positive benefit to the community at large.

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

Negative

Free text box, no character limit:

Resources redirected from other important public health initiatives and food safety surveillance activities undertaken within jurisdictions and having to be redirected to FSANZ standard development.

How would this need to be implemented to be successful?

Free text box, no character limit:

WA does not support this.

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

Not Answered

Free text box, no character limit:

WA does not support this.

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:

Resources redirected from other important public health initiatives and food safety surveillance activities undertaken within jurisdictions and having to be redirected to FSANZ standard development.

How would this need to be implemented to be successful?

Free text box, no character limit:

WA does not support this.

## Component 2.3

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

Not Answered

Free text box, no character limit:

WA is not aware of all the reasons that would trigger a need for FSANZ to rebalance its workload priorities by addressing resourcing pressure. However, knowing that more than half of food businesses are not fully prepared to execute a food recall accurately and in a timely manner, mainly as a result of their poor product traceability, we would assume that FSANZ Food Recall Team would spend considerable time, helping some food businesses to do the work that should be done by the food business, and more importantly that should be done before the business contacted FSANZ Food Recall Team. Considering the consistency of this and other issues that FSANZ Food Recall Team face, WA would propose two recommendations, first as an approach and the second as a long-term solution for your consideration:

1. WA propose to introduce more intensive, but specific training. FSANZ Food Recall Team could discuss with various food industry consultants, who could deliver the training, that would concentrate on specific food recall steps that are taking FSANZ Food Recall Team considerable time and effort to discuss and to complete the work with a food business going through food recall process.

2. WA second proposal can be seen a part of modernising food recall system. It should be considered as a long-term solution, where FSANZ, like FDA, could introduce a concept of 'Tech-Enabled Traceability.' This represents a novel approach to food safety, where technology and related tools create a comprehensive, accurate, and effective traceable food system, an imperative for executing a successful food recall.

New Era of Smarter Food Safety Blueprint | FDA

## 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:

An opportunity for FMM to engage FSANZ on system priorities to focus the FSANZ workplan on delivering the highest priority project work has some merit. Care needs to be given to ensure FSANZ independence is maintained however a strategic approach would contribute to ensuring the best outcomes for the system are achieved.

The associated policy problem may in part be resolved through the updated Food Regulation Agreement (FRA) which aims to establish regular strategic planning arrangements (ie strategic plan) to support FMM. It is important that visibility of the FRA review is maintained throughout the FSANZ Act review work to ensure consistency in approach.

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

Free text box, no character limit:

This is where the strategic plan developed through FRSC and endorsed by FMM will be key. Actively maintaining risk and emerging issues registers will also be useful in considering prioritisation activities.

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

Free text box, no character limit:

FSANZ more effectively using opportunities at FMM meetings to raise issues/risks or update on key projects/priorities – not just verbal updates but accompanied with associated agenda papers.

### 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:

FSANZ has increased its engagement with FRSC and the regular updates provided at FRSC meetings have been appreciated and increased system awareness of delays, issues and challenges. The recent approach by FSANZ to engage FRSC closely on the added sugars work is a good example of engagement and collaboration to manage risk and achieve a suitable outcome.

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

Free text box, no character limit:

No comment

### 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:

Having FSANZ as a database custodian would most definitely improve and expedite information sharing across the regulatory system, and support informed decision making. FSANZ could enter reciprocal data sharing agreements that are of mutual benefit with organisations holding or developing nutrient composition databases. For example, in component 2.2.4 (Support bringing more traditional foods to market), FSANZ could reach out to an existing research group establishing the Vitamin D content of bush tucker to share this information, and/or contribute to additional analysis costs and establish a more extensive compositional database of traditional foods. Given the relationship building and sampling framework for this data collection has been established, the resource input from FSANZ is reduced and a project of national significance can be achieved (Bush Tucker and Vitamin D (telethonkids.org.au)). Similarly, the George Institute holds significant nutrient composition data from packaged label analysis (Power in your hands: FoodSwitch and ecoSwitch | The George Institute for Global Health) which could readily support the work of FSANZ.

Review of the FRSC Improved Intelligence Options project outcomes would inform analysis of this policy problem.

The ongoing cost of establishing and maintaining shared databases is important to understand from a jurisdictional perspective especially if costs are shared across the system. To date jurisdictions have very little visibility of the Branded Food Database and how the information contained in this will directly benefit jurisdictions. It is understood that this information will be useful in FSANZ undertaking its standard setting role however any broader application needs to be further explained.

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

Free text box, no character limit:

Nutrient composition databases would be the most useful for FSANZ to be the data custodian, or to have data sharing agreements with other organisations or academic institutions.

## 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:

See answer to below question.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

International information sharing is an area that should be explored as a strategy to reduce proposal/application workload and expedite approval. Sharing arrangements could be considered on a case-by-case basis and may follow a flow chart approach to assessment (see Figure 1.). The sharing arrangements could be informal and/or formal where a specific joint bi- or multi-national project exist.

For example, the recent work done in defining added sugar for P1062. The final revised standard will not permit a 'no added sugar(s)' claim when a food:

- contains, or is, an 'added sugar' as defined in the Code
- does not contain 'added sugar' but contains more sugars (i.e., monosaccharides and disaccharides) than:
  - o 10.0 g /100 g for solid food
  - o 7.5 g /100 mL for liquid food

Similar in approach, in their Nutrient and Promotion Profile Model, the World Health Organization (1) (2022) outlines a front-of-pack indicator, label or flag is required when the total energy from sugar exceeds specified thresholds:

- 30% total energy (7.5g /100kcal) for dry cereals and starches (category 1), fruit and vegetable purées/ smoothies and fruit desserts (category 3) and dry fruit snacks (category 5.1); and
- 40% total energy (10g/100kcal) dairy foods (category 2)

Although not strictly identical, the synergies in this work could have easily informed an early approach to defining added sugars in the Australia context.

Figure 1. Draft example - flow process for international sharing arrangements.

Application/ Proposal Received>>Existing international standard >>(Yes)>> Application to Australian context?>> Alignment with Australian Requirements.

Existing international standard >>(No)>> Application/ Proposal FSANZ enters workplan.

## 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:

There may be value in enabling FSANZ to interpret food standards, from the perspective of what was the intention of the standard in its drafting. This would enable food businesses and enforcement agencies to apply a standard in context of how it was intended to be applied. It is important to recognise however, that until a standard is tested legally in Court, the interpretation can be subjective. Guidance and the intention (the how) of what is written in a standard could be complied with, or what a clause within a standard was intended to mean, would be of beneficial for both food businesses and enforcement agencies.

The other issue is, most food product would be required to comply with multiple food standards, so the statement of intent of each standard would need to be able to be considered within the context of how the standards apply to the food as a whole.

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:

The greatest benefit is likely to be the application of labelling and potentially compositional requirements of the Code. It is not clear however, of whether consistency would be an outcome of issuing a Statement of Intent, for Chapter 3 and 4 standards, as these are outcome-based standards, and jurisdictions have more flexibility in how the requirements of these standards are complied with, often depending on the capacity of the food business, its location (any local laws) and design, its combination of food handling activities, and any other the additional requirements outside of the Code, as per State or Territory Food Acts, i.e., primary production and processing food businesses.

While providing a Statement of Intent is likely to be helpful for enforcement agencies and assist consistency in the application of the standard, it is not a guarantee of improved overall consistency, as there are other factors outside of the Code, that may also contribute to this. Basically, each food business is different, applying an interpretation of an outcome-based standard, without considering all aspects of the food business and its operation may be challenging.

There is a direct conflict between providing a regulatory environment that supports outcome-based action to demonstrate compliance, while requiring consistency in approach, both across and within a jurisdiction.

#### 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:

WA would welcome a FSANZ capacity to update and maintain guidelines for industry to improve consistent interpretation and enforcement of food standards. It is medium and small size food businesses in WA are most of the time struggling with a concept of outcome-based legislation. Therefore, in order to get consistency in interpretation, and enforcement of standards, FSANZ industry guidelines should clarify using relevant examples, subjects that are not always easily understood. Few topics that we have noticed that WA food businesses are finding challenging are listed below, but not limited to:

- o Alternative way of compliance
- o Non-traditional foods
- o Kava
- o Health claims

Finally, it has been reported to us that WA food businesses and WA food enforcement agencies found FSANZ 'Safe Food Australia -A guide to the Food Safety Standards' to be helpful document. Therefore, we would support FSANZ development of industry guidelines to guide interpretation of food standards.

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:

Amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Maori people would support cultural considerations being taken into account in the food standards process.

#### Component 2.4.7

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

Not Answered

Free text box, no character limit:

States and Territories have food legislation compliance and enforcement policies in place based on national principles. FSANZ already collaborates with the jurisdictions at a State / Territory level enforcement agency and does this well. In WA the Department of Health, (DOH) is one of 138 enforcement agencies, under the WA Food Act 2008 (Food Act). The appropriate enforcement agency for most food businesses (outside of food businesses prescribed

by regulation to remain with the DOH), is the relevant local government authority responsible for the district in which the business is located or housed / based.

The DOH in its role as administrator of the Food Act operates in the space between FSANZ and local government in facilitating consistent implementation within the State of the Food Standards Code. For FSANZ to collaborate with all 138 enforcement agencies within WA, would be challenging.

It is also important to recognise the Food Acts are outcome based in nature, meaning that food businesses have multiple ways in which to demonstrate compliance with this legislation or in other words show that they are adequately identifying and managing the food safety risks within the business, particularly with Chapter 3 and 4 of the Food Standards Code.

The Food Act provides a range of compliance and enforcement tools that vary in severity. A graduated and proportionate response is taken in the application of these tools based on risk to public health and safety, and considers the severity of the alleged offence, compliance history of the food business, circumstances in which the alleged offence occurred, cooperation of the food business with the regulator, remedial action taken by the food business, due diligence taken by the food business, and if it is in the public interest. All these factors impact on how a decision is made about the appropriateness of an intervention by an enforcement agency.

## Component 2.4

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

Not Answered

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?

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

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?

Not Answered

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?

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

## 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?

Not Answered

Free text box, no character limit:

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

Not Answered

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?

Not Answered

Free text box, no character limit:

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

Not Answered

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?

Not Answered

Free text box, no character limit:

## Other comments

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

Not Answered

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: