



AUSTRALIAN  
**FOOD &  
GROCERY**  
COUNCIL



SUBMISSION

**Response to: Public consultation – Modernising  
the FSANZ Act 1991: Impact Analysis**

10 April 2024

## PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

With an annual turnover in the 2021-22 financial year of \$144 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

The diverse and sustainable industry is made up of over 17,000 businesses ranging from some of the largest globally significant multinational companies to small and medium enterprises. Each of these businesses contributed to an industry-wide \$3.2 billion capital investment in 2021-22.

Food, beverage and grocery manufacturing together form Australia's largest manufacturing sector, representing over 32 per cent of total manufacturing turnover in Australia. The industry makes a large contribution to rural and regional Australian economies, with almost 40 per cent of its 271,000 employees being in rural and regional Australia.

It is essential to the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry are recognised and factored into the Government's economic, industrial and trade policies.

Throughout the COVID-19 pandemic, the food and grocery manufacturing sector proved its essential contribution to Australian life. Over this time, while our supply chains were tested, they remained resilient but fragile.

The industry has a clear view, outlined in *Sustaining Australia: Food and Grocery Manufacturing 2030*, of its role in the post-COVID-19 recovery through an expansion of domestic manufacturing, jobs growth, higher exports and enhancing the sovereign capability of the entire sector.

*This submission has been prepared by the AFGC and reflects the collective views of the membership.*

## EXECUTIVE SUMMARY

The AFGC welcomes the opportunity to respond to the *Public Consultation – Modernising the Food Standards Australia New Zealand Act 1991: Impact Analysis* (the “IA”).

Australian and New Zealand consumers enjoy one of the safest, most diverse, most abundant, most secure and affordable food supply in the world. It is delivered by an innovative, internationally competitive, domestic food manufacturing sector in each country, working in partnership and guided by a world’s best practice food regulatory system. Global supply chain issues, rapid food technology and scientific advances, and greater understanding of the food, nutrition, and health nexus are driving the need for reforms of the food regulatory system.

The IA suggests ways in which the FSANZ Act could be amended to clarify its objectives, extend its coverage, streamline and modernise FSANZ processes, and meet its resourcing needs. The AFGC does not agree with all of the suggestions for change put forward by the IA, but it is aligned with many, and supportive of the overall need for reform. As the review of the FSANZ Act and other aspects of the food regulatory system proceed, it is critical that enhancing the strength and resilience of the food industry is a key outcome, whilst protecting public health and safety retains its primacy. These dual objectives can only be achieved if FSANZ’s central role in the food regulatory system is embraced by the review and subsequent reforms which:

1. **confirm the independence of FSANZ as a Statutory Authority** through maintaining adherence to best practice regulation informed by scientific evidence and fact, and guided, but not dictated to, by an appropriate food regulatory policy framework determined by the Food Ministers’ Meeting (FFM),
2. **recognise that the current public health and safety protection objectives of FSANZ are extensive**, and well able to respond to both short- and long-term health and safety issues,
3. **acknowledge the fundamental public good function of food regulation** and FSANZ’s role through providing public funding that at least matches that of comparable overseas regulatory agencies such as Health Canada, and so ensures FSANZ’s regulatory, scientific and technical expertise is world-class in capability and capacity,
4. **modernise and streamline food regulatory processes** through providing flexible and risk-based pathways to proportionate regulatory responses and approvals encompassing the full range of regulatory measures including black letter law, codes of practice and guides, and notification and self-substantiation mechanisms,
5. **facilitate food industry innovation through fee for services offerings** for applications which are expedited and/or provide an exclusive capturable commercial benefit to the applicant
6. **harmonise regulatory approaches with international agencies** through information sharing, aligning risk-based frameworks, and where appropriate and low risk, recognition by FSANZ of overseas regulatory approvals and their supporting evidence base,
7. **update FSANZ governance processes** providing a more skills based, as opposed to sector representing board, and establishing appropriate board delegation of authorities to the FSANZ executive to streamline decision making, and
8. **direct greater coordination and cooperation between the FFM, the Food Regulation Standing Committee and FSANZ** and without compromising the distinct roles and responsibilities each has in operating a modern [bi-]national food control system.

The AFGC considers the options canvassed in the Impact Analysis (IA) go only part of the way to meeting these criteria through the reform proposals which are described. There is, however, a lack of detail on how they would work in practice.

For example, the IA canvasses the need for clarity in the definitions of public health and safety to clarify the FSANZ can address short- and long-term health needs despite acknowledging that this is already possible. The AFGC agrees with the IA that further clarification would not materially affect FSANZ's operations [but does not oppose an amendment to the FSANZ Act if deemed necessary].

Overall, the preferred Option 2 does not extend the scope of FSANZ's regulatory functions but rather proposes operational changes to streamline the processing of applications through greater adherence to a new risk-based framework, more use of codes of practice, and strengthening of international linkages. The IA has discarded self-substantiation and notification as an option for low-risk applications approvals, which the AFGC opposes. This denies consumers the benefits of new food technologies and nutritional science in a timely manner. Moreover, it is inconsistent and contrary to current industry practices when complying with food safety standards and represents a missed opportunity for regulatory streamlining and sparing of resources for FSANZ and the jurisdictions.

The AFGC is strongly opposed to the introduction of an industry levy to meet the substantial \$10 million annual shortfalls in FSANZ funding identified by the IA. However, the IA dismisses the well-established principle that public good functions by the government should be funded from the government's general revenue by proposing an industry levy. This fails the tests of good taxation policy; namely:

- **equity** - by proposing arbitrary cut-offs for the businesses to pay the levy, and the amount,
- **efficiency** – there are large administrative costs for industry and government to collect the levy, and
- **practicality** - identifying the companies in the supply chain which might be levied.

The simplest, most equitable and most efficient way to meet the shortfall would be to double FSANZ's funding to a *per capita* to match that of comparable overseas regulatory agencies such as Health Canada.

The AFGC welcomes further input in the review of the FSANZ Act and other parts of the ongoing review of the ANZ food regulatory system.

## RECOMMENDATIONS

The AFGC recommends that:

1. the Impact Analysis (IA) conclusions reflect that a safe, nutritious, abundant and affordable food supply is critically dependent on prosperous Australian and New Zealand food manufacturing industries and a modernised ANZ food regulatory system.
2. any reforms to the FSANZ Act do not diminish the independence of FSANZ as a statutory authority by giving greater weight to the requirement for FSANZ to 'have regard to' Food Ministers' Meeting (FMM) policy guidelines during the development of food standards.
3. Option 1 of IA be rejected, and selected elements of Option 2 be taken forward for further development.
4. no amendments clarifying the meaning of 'public health and safety' in the FSANZ Act are required.
5. further work be undertaken to develop an appropriate, comprehensive risk framework for applications and proposals to improve the efficiency of assessment, accelerate pathways to approval, and establish appropriate and proportionate regulatory approaches.
6. the funding of FSANZ comprises:
  - Increased federal government funding to levels similar to that of comparable overseas national food regulatory agencies, and
  - cost recovery mechanisms currently available to applicants seeking amendment of the Food Standards Code be maintained.
7. elements in Option 2, which are clearly identified as improving the efficiency and effectiveness of FSANZ operations, be prioritised as key reforms for the FSANZ Act, and FSANZ's operations.
8. self-substantiation for low-risk foods remains within the scope of the FSANZ Act review as it is the single most potent enhancement of the efficiency of FSANZ operations with very low risk to consumers.
9. the FSANZ Act be amended to allow the FSANZ Board being able to delegate decision-making for low-risk matters and approvals to the FSANZ CEO as long as the Act prescribes:
  - conditions under which matters and approvals are considered low-risk, and
  - reporting requirements of the decisions made by the FSANZ Board and CEO to maintain the transparency of FSANZ decision-making.
10. the FSANZ Act not be amended to allow the FMM to delegate decision-making to senior bureaucrats in the jurisdictions.
11. FSANZ Board appointment processes be reformed to align with contemporary good governance principles resulting in an open market recruitment of a skills- and expertise-based Board.
12. any recommendations pertaining to amendment of the FSANZ Act, or FSANZ's operational processes not be based on the misconception that there is strong evidence of risk to public health and safety from the accumulative or long-term health impacts of FSANZ-approved food additives in the Australian and New Zealand food supply.
13. the IA reflects that food safety has been a paramount concern of food companies and has been effectively assured through robust preventative food safety practices for many decades and well before the advent of the current food regulatory system.

14. the 4 best practice elements of regulatory systems identified by the IA do not diminish the important principles of best practice regulation as detailed in the Federal Government's Regulatory Impact Analysis Guide for Minister's Meetings and National Standard Setting Bodies.
15. further consultation be conducted to determine how best to incorporate recognition of indigenous culture into the FSANZ Act, and the practical implications on FSANZ's operations including the impact on FSANZ's resource requirements.
16. the IA concludes that FSANZ provides comprehensive reasoning supporting its decisions, including how it gives regard to policy guidelines, as demonstrated by its strong track record in having its recommendations accepted without review by the FMM.
17. amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the FMM.



## INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to respond to the *Public Consultation – Modernising the Food Standards Australia New Zealand Act 1991: Impact Analysis* (the “IA”).

This submission represents the collective view of the AFGC membership. Reflecting the importance of the issue, AFGC member companies will be making their submissions to the current consultation. Their views may differ in some detail from the AFGC’s views, but the AFGC is confident that all will reflect a common view that the food regulatory system requires a substantial overhaul to modernise it and to align it more closely to both the needs of the food industry and the needs of the wider community it serves.

This submission is in 3 main parts:

1. General comments about the IA and the approach it takes in describing the current bi-national food regulatory system (its shortcomings and successes), and the opportunities for improvement
2. Specific comments regarding some points made in the draft RIS which have raised some concerns, and
3. Responses to questions posed in the IA, as submitted in the portal.

## GENERAL COMMENTS

### Food industry partners with the food regulatory system

The AFGC continues to view the modernisation of the food regulatory systems as a high priority.

The AFGC holds the strong view that an effective food regulatory system and a prosperous food industry work together, hand in hand, in ensuring a food supply of the highest quality for consumers in Australia, in New Zealand and in the export markets of both countries. As the review of the FSANZ Act and other aspects of the food regulatory system reach their conclusion, it is imperative that this bond is preserved, and ideally enhanced.

In previous submissions, the AFGC has emphasised the critical importance the food industry plays in creating wealth for Australia and its important role in food security, an issue that other stakeholders have also raised in the consultations around modernising the food regulatory system<sup>1</sup>. Australia’s food security relies heavily on a strong, internationally competitive, profitable agri-food system to provide the bulk of food ingredients consumed by Australians as manufactured food products, manufactured in Australia.

The AFGC strongly supports reforms that are consistent with the imperative that Australia’s food system’s function be strongly aligned with supporting public safety and health objectives. This is best achieved through supporting a strong, resilient, domestic, internationally competitive food industry investing in

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<sup>1</sup> Impact Analysis, para 5, p82.

innovative products carrying truthful scientifically-substantiated health claims about their contribution to better diets protecting and promoting good health.

This requires a food regulatory system responsive to the dual needs of providing high levels of consumer protection and a profitable, competitive, domestic food industry. Only profitable companies can innovate, and the Government can only work closely with domestic manufacturing companies encouraging them to innovate to support domestic health priorities.

The food manufacturing sector competes at home, and overseas, in a global market. This requires best practice regulation (to minimise compliance costs) which is as flexible as possible to support novel food technologies, and the label claims, allowing the industry to inform consumers truthfully of their benefits.

Through reforms of the food regulatory system based on these principles, greater resilience in Australia's food system will be created leading, ultimately, to greater food security for Australians. Reform of the FSANZ Act is the lynchpin to a successful overall reform package encompassing all the elements of the ANZ food regulatory system benefiting Australians and New Zealanders alike.

#### **Recommendation 1.**

The AFGC recommends that the IA conclusions reflect that a safe, nutritious, abundant and affordable food supply is critically dependent on prosperous Australian and New Zealand food manufacturing industries and a modernised ANZ food regulatory system.

### **The independent role of FSANZ**

The clear division between policy development (FMM responsibility) and the setting of standards (FSANZ responsibility) is a safeguard mechanism. This ensures food standards and regulations development by FSANZ, as a statutory authority, is independent, free from political interference, and based on the best available scientific evidence and fact-base reflecting the technical complexities of a food system tasked with delivering very safe, very nutritious foods to consumers.

The AFGC considers it critical that FSANZ maintains its independence. The arguments favouring regulatory frameworks in some areas being kept at arm's length and independent are well established. The *Royal Commission on Australian Government Administration* found that the two main reasons for the creation of a statutory body were the need for independence and the status conferred by establishment legislation<sup>2</sup>. Statutory Authorities are free from party political pressures and can focus on long-term priorities, but still be accountable under the *Public Governance, Performance and Accountability Act 2013* (Cth), which contains requirements relating to governance, planning, record keeping, and reporting<sup>3</sup>.

<sup>2</sup> [Royal Commission on Australian Government Administration: report \(apo.org.au\)](https://apo.org.au/publication/royal-commission-on-australian-government-administration-report)

<sup>3</sup> B.B. Saunders et al. Responsible Government, Statutory Authorities and the *Australian Constitution*. Federal Law Review Vol 48. Issue 1. 2019. <https://doi.org/10.1177/0067205X19890445>



There are implications of the division between ‘policy’ and ‘regulation’ on the food system. Society’s expectations drive political responses that prioritise the outcomes in broad terms being sought such as the protection of public health and safety and provision of information to consumers. The political process, and therefore policy development is, by definition, contestable and so subject to influence from different vested interest groups. Food regulation, or food standards, specifies enforceable behaviours of the food industry consistent with the policy guidance but based on independently assessed scientific evidence and facts, rather than expectations and opinions of vested interests. This division between policy and regulation is assured by food standards being developed by a statutory authority – i.e. FSANZ.

To be clear, the AFGC is not arguing that the FMM should have no influence on FSANZ deliberations through its collection of policy guidelines, but that influence should in no way distort or override FSANZ’s careful assessment of the relevant scientific evidence and fact-base when assessing applications and proposals to amend the FSC.

#### **Recommendation 2.**

The AFGC recommends that any reforms to the FSANZ Act not diminish the independence of FSANZ as a statutory authority by giving greater weight to the requirement for FSANZ to ‘have regard to’ Ministerial policy guidelines during the development of food standards.

### **Reform of the food regulatory system is required**

The IA reflects that Australian and New Zealand consumers enjoy a safe and nutritious food supply which confirms that the FSANZ Act and FSANZ operations are working well in achieving their stated objectives and purpose. The AFGC has similar views. The IA also describes a cumbersome food regulatory system suffering from complex mandatory processes, chronic under-resourcing, poor coordination across key agencies, and eroding stakeholder confidence. The AFGC has similar views.

The IA suggests ways in which the FSANZ Act could be amended to clarify its objectives, extend its coverage, streamline and modernise FSANZ processes, and meet its resourcing needs. The AFGC does not agree with all of the suggestions for change put forward by the IA, but it is aligned with many, and supportive of the overall need for reform.

The AFGC therefore provides its strong support for parts of Option 2, rather than Option 1 – *status quo*.

#### **Recommendation 3.**

The AFGC recommends Option 1 of the Impact Analysis be rejected, and selected elements of Option 2 be taken forward for further development.

## **SPECIFIC COMMENTS**

The AFGC makes the following comments on specific issues or concerns which have been identified in the IA.

## Clarification of public health

Concerns regarding the rising incidence of obesity and associated non-communicable diseases (NCDs) have driven a focus on using the FSC as a policy response. The IA canvasses the option of clarifying the definition of public health protection within the FSANZ Act mainly, it would seem, to address the concerns among some stakeholders that ambiguity exists as to whether the Act encompasses both short-term and long-term health effects. The IA makes it clear that<sup>4</sup>:

*“In practice, food regulatory measures established by the Act are already being used to protect both short- and long-term health”.*

The AFGC concurs with this view. Regulatory options targeting healthy eating available to FSANZ through the FSC comprise:

- Food labelling – through mandatory requirements and restrictions
- Food composition – mandatory additions and restrictions, and
- Food accessibility – restrictions on places of sale.

Healthy diets are a function of the composition of foods consumed and the amount of food consumed in a particular time period, at both the individual and population levels. The amount consumers eat is, of course, ultimately a personal choice, and challenging to regulate. Regulation can assist, however, by ensuring that foods are appropriately labelled so that consumers can make informed choices. It remains a fundamental maxim, however, that all foods can contribute to a healthy diet, and the converse, is that all foods can contribute to poor diets. It is important to note that public health extends beyond simply diet and includes, for example, physical activity.

The AFGC contends that the current wording of the Act in conjunction with consideration of Ministerial policy guidelines, which explicitly defines public health and safety as covering both short and long-term effects associated with food consumption, is sufficient.

### Recommendation 4.

The AFGC recommends that no amendments clarifying the meaning of ‘public health and safety’ in the FSANZ Act are required.

## A risk-based framework and new paths to approval

The AFGC strongly supports reform of the FSANZ Act which allows FSANZ to employ a risk-based framework to determine appropriate pathways to approval of applications and a proportionate regulatory response.

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<sup>4</sup> Impact Analysis, para 3, p39.

The benefits of such a framework would include:

1. **stakeholder alignment** on the necessity, or not, for regulatory interventions and the nature and degree of attention for proposed interventions and amendments (applications or proposals) to the FSC.
2. **more efficient allocation** of FSANZ staff resources
3. **enhanced enforcement priorities** and resource requirement decisions by the jurisdictions
4. **greater confidence for public health** and consumer groups that regulatory resources are being devoted to priority areas
5. **greater certainty for the industry** in the outcome when seeking to bring innovative food technologies, novel foods and claims to market, and
6. **a surer path to proportionate regulatory responses** from the food regulatory system.

The AFGC supports the proposed *Indicative risk framework*<sup>5</sup>, but considers the following additional factors should be considered explicitly in the framework *vis*:

- is the subject substantially the same as an issue previously considered by FSANZ? If so, a fast-track pathway should be considered. For example, FSANZ has approved close to 100 foods derived from gene technology most of which are very similar in the way they are developed. A fast-track approval process should apply in these cases.
- has the subject already been assessed as having negligible or low risk by an overseas relevant, competent authority (such as Health Canada, the US Food and Drug Administration, or the European Food Safety Authority)?
- has regulatory approval been provided by an overseas, relevant authority, and has the approval included risk-management provisions,
- are there risks to Australia's reputation which might impact trade or implications to Australia's position as a signatory to the World Trade Organization agreements? and
- has an established presence in overseas markets been confirmed with no public health or safety concerns being identified?

Similarly, a FSANZ risk-based framework could extend to conducting a risk assessment of the applicant when the application is initially considered of low to moderate risk. For example, if the applicant had established a track record of submitting applications of similar complexity which:

- met all the requirements of the FSANZ Application Handbook,
- had been assessed and recommended with no requests from FSANZ for further information,
- had no objections or concerns raised from stakeholders (particularly jurisdictions), and
- FFM approvals had been readily provided without concerns

the applicant, as well as the application, might qualify as being 'low risk' with the application directed down a 'lower risk' pathway to approval.

The AFGC supports greater use of lower-risk amendments utilising codes of practice. Codes of practice, either as prescribed codes where compliance for specified entities is mandatory, co-regulatory codes which are supported by the government, but compliance is voluntary, or self-regulatory codes completely independent of government and compliance is voluntary are all

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<sup>5</sup> Impact Analysis, Table 10, p 51

legitimate regulatory measures. The AFGC considers there is a place for all three types of codes, particularly if development is led by industry.

A risk-based framework for labelling standards was developed as an outcome of the Blewett review of food labelling law and policy in 2011<sup>6</sup>. For high-risk issues (e.g. food safety) it recommends mandatory food standards, but for low-risk 'values' issues such as consumer perceptions and ethical issues, codes of practice and self-regulation are more suitable.

A working example is the *Grains & Legumes Nutrition Council's (GLNC) Code of Practice for Whole Grain Ingredient Content Claim*<sup>7</sup>. In 2013, the GLNC, which is an industry association representing cereal food manufacturers, established this voluntary Code which is intended to guide the use of whole grain ingredient claims, on food labels in Australia and New Zealand. The Code provides clear, consistent messaging on the whole grain content of foods helping consumers make informed choices. It was developed in consultation with regulators and the wider community in response to an absence in the FSC of a standard to regulate the use of whole grain content claims on food labels. It is a model of how an industry code can work successfully as an alternative to black-letter law benefiting both the industry and consumers.

#### **Recommendation 5.**

The AFGC recommends that further work be undertaken to develop an appropriate, comprehensive risk framework for applications and proposals to improve the efficiency of assessment, to accelerate pathways to approval, and establish appropriate and proportionate regulatory approaches.

#### **FSANZ funding**

The AFGC is sympathetic to the very tight resource constraints under which FSANZ operates having witnessed its federal budget allocation diminish in real terms over the last decade. Consequently, the AFGC strongly supports greater resources being made available to FSANZ consistent with its leadership role as Australia's national food standards agency.

As the IA has recognised and described, there is an extensive public good / community benefit resulting from the development and setting of food standards - namely the protection of public health and safety, and the provision of information for informed consumer choice.

The AFGC recognises there is an industry good associated with food regulations which act as guidelines for industry behaviours based on the community expectations of the day, and the basis of penalties if companies cross those guidelines.

It is also recognised that regulation imposes costs on both industry (compliance costs) and government (enforcement costs), so it is in the best interests of the community as a whole that regulation costs are minimised.

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<sup>6</sup> Labelling Logic: Review of Food Labelling Law and Policy (2011). Commonwealth of Australia.

<sup>7</sup> [Code of Practice for Whole Grain Ingredient Content Claims - Grains & Legumes Nutrition Council \(glnc.org.au\)](https://glnc.org.au)

The clear and substantial public good articulated in the IA confirms there is a strong and legitimate case for Government funding of the food regulation system, and specifically FSANZ's functions. FSANZ can charge a fee for assessing applications outside the FSANZ work plan schedule where:

- the applicant wishes to expedite the commencement of the assessment, and/or
- an *exclusive capturable commercial benefit*<sup>8</sup> is conferred.

The AFGC strongly supports the current system which combines public funding of predominantly public good functions of FSANZ, with options for industry to pay for applications under the conditions listed above. The fee for application option aligns strongly with the current *Australian Government Cost Recovery Policy*<sup>9</sup> which supports cost recovery based on the recipients of a government activity receiving a specific service, rather than a general public benefit being generated.

The AFGC **strongly opposes** the IA suggestion of imposing an industry levy on the largest 5,000 food companies to meet the current estimated shortfall in FSANZ funding of \$10m p.a. based on:

1. **equity** – imposing a levy on a portion of the food industry based on arbitrary criteria (size of levy, turnover ranking of company) is fundamentally inequitable
2. **efficiency** – the \$10m FSANZ shortfall is relatively small compared to the overall Federal budget. Likely, the bureaucratic cost of collecting the levy, and the cost to industry of paying it (setting up payment facilities etc) would surpass the amount collected, and
3. **practicality** – identification of the 5,000 businesses to be levied would be difficult as no database identifies food industry businesses and ranks them by turnover. To be clear the food businesses which are regulated by the FSC extend from primary producers to distributors, ingredient manufacturers, manufacturers and retailers (restaurants, hotels, pubs, clubs, fast food outlets, convenience stores and supermarkets). Identifying which businesses would be captured would be problematic in the extreme.

Furthermore, there is no mechanism to collect the levy. According to the *Australian Government Cost Recovery Policy*<sup>9</sup> levies raised by statutory authorities such as FSANZ require separate legislation which itself would have to align with the Government's broader taxation policy.

A recent report<sup>10</sup> by the Productivity Commission states that since the 1960s the number of industry levies has risen from 4 to 248 and warns:

*"Their design tends to deviate from the general principles of good tax system design being narrowly applied to distortive and less efficient tax bases – transactions, revenue and inputs to production".*

The report proposes several policy and decision frameworks against which proposed levies can be tested, noting the current lack of any such framework, and warning of the need to avoid deviations from good tax system design as a foundation for Australia's productivity growth.

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<sup>8</sup> <https://www.foodstandards.gov.au/business/novel/exclusivity-of-use-for-novel-foods-and-nutritive-substances>

<sup>9</sup> [Australian Government Cost Recovery Policy | Department of Finance](#)

<sup>10</sup> [Towards Levyathan? Industry levies in Australia - Productivity Commission \(pc.gov.au\). 2023](#)

The basic principles for cost-recovery by the Government are well-established<sup>11</sup> *vis*:

*“Cost recovery arrangements that are not justified on grounds of economic efficiency should not be undertaken solely to raise revenue for Government activities, and*

*Cost recovery arrangements should apply to specific activities or products, and not to the agency as a whole”.*

The AFGC strongly advises that the solution to FSANZ's funding shortfall lies in the IA itself<sup>12</sup>.

The international comparisons of the central government support of food regulatory systems bring into stark relief that FSANZ is the poor cousin to sister agencies *vis*:

*“Comparable international bodies invest significant resources to support the work of their standard-setting bodies. There is some variation in the investment made, with the per capita investment in the Canadian food standard-setting body being \$1.31 per person, per year, increasing to \$3.60 per person in England; \$7.00 per person per year in Ireland; and \$7.76 per person, per year in Scotland. By contrast, FSANZ's substantive funding equates to \$0.70 per person per year in Australia and \$0.40 per person, per year in New Zealand”.*

Health Canada is commonly viewed as the international agency most similar to FSANZ, and indeed, Canada itself is probably the country most similar to Australia. And yet, Australia's central food regulatory agency, i.e. FSANZ, receives just 50% *per capita* funding compared to its Canadian counterpart. The AFGC also understands that Health Canada does not collect fees from industry to support its public good food regulation functions.

The \$10m shortfall in FSANZ funding is comparatively small when compared to the Australian Government's overall budget. The simplest, most equitable and most efficient remedy for addressing the shortfall would be for the Federal Government to increase FSANZ's funding to a *per capita* level similar to that of overseas regulatory agencies.

#### **Recommendation 6.**

The AFGC recommends the funding of FSANZ comprises:

- increased federal government funding to levels similar to that of comparable overseas national food regulatory agencies, and
- cost recovery mechanisms currently available to applicants seeking amendment of the Food Standards Code be maintained.

<sup>11</sup> <https://ministers.treasury.gov.au/ministers/peter-costello-1996/media-releases/release-productivity-commission-report-cost-recovery>

<sup>12</sup> Impact Analysis, para 3, p24.



## Net Benefit (Chapter 6) and Best Option (Chapter 8) methodology

The AFGC supports strongly attempts to determine the benefits and costs of regulatory interventions in monetary terms. The reality is, however, that the detriments and benefits of regulation for both industry and the wider community are difficult to identify in their entirety, and it is difficult to assign a monetary value to them.

The AFGC considers, therefore, that at best the quantitative dollar benefit/cost ratios described in the IA are indicative and support possible options for change identified in the qualitative assessments.

Notwithstanding the shortcomings of the net benefit and best option assessments, the AFGC concurs with the overall conclusions of the IA that there are improvements to be made in the development of the FSC and FSANZ's operations. In the absence of robust quantitative assessments of benefit changes, elements of Option 2 which due to their obvious intrinsic value will result in the streamlining of FSANZ operations should be implemented.

### Recommendation 7

The AFGC recommends that elements in Option 2, which are clearly identified as improving the efficiency and effectiveness of FSANZ operations, be prioritised as key reforms for the FSANZ Act, and FSANZ's operations.

## Self-Substantiation and low-risk applications

The IA states that suggestions previously canvassed that self-substantiation pathways for industry to bring low-risk foods to market were opposed by health stakeholders, and as a consequence, they have been excluded from further analysis by the FMM.

This is a disappointing outcome for two reasons:

1. it is a clear opportunity to streamline regulatory approvals sparing FSANZ resources and allowing the food industry to get better products to market sooner, which would benefit consumers with, by definition, little or no risk to public health, and
2. it perpetuates a fundamental inconsistency in the food regulatory system which relies heavily on industry self-substantiation to assure the production of safe food through outcome-based standards and implementation of company-specific food safety plans (including safe allergen management).

Indeed, the US FDA has stated:

*“Under HACCP-based regulatory programs, there is a clear delineation of responsibilities between industry and regulatory agencies: Industry has the primary responsibility for the safety of the food it produces and distributes; the government’s principal role is to verify that*

*industry is carrying out its responsibility, and to initiate appropriate regulatory action if necessary<sup>13</sup>.*

Consequently, the AFGC maintains its strongly held view that self-substantiation should remain under consideration during the development of reforms of the food regulatory system.

#### **Recommendation 8**

The AFGC recommends that self-substantiation for low-risk foods remains within the scope of the FSANZ Act review as it is the single most potent enhancement of the efficiency of FSANZ operations with very low risk to consumers.

#### **Delegations of decision-making**

The IA has proposed delegations of decision-making *vis*:

1. from the FFM to the senior bureaucrats; and
2. from the FSANZ Board to the FSANZ CEO.

FSANZ processes, including mandatory consultations, are prescribed in the FSANZ Act. Furthermore, FSANZ processes and their outcomes are subject to full disclosure through the decision-making steps for both applications and proposals to amend the FSC. FSANZ publishes extensive documentation describing the basis of its decisions right up to the drafts of proposed FSC amendments. The AFGC supports the FSANZ Board being able to delegate decision-making to the FSANZ CEO for approvals of low-risk amendments to the FSC.

#### **Recommendation 9**

The AFGC recommends that the FSANZ Act be amended to allow the FSANZ Board being able to delegate decision-making for low-risk matters and approvals to the FSANZ CEO as long as the Act prescribes:

- conditions under which matters and approvals are considered low risk, and
- reporting requirements of the decisions made by the FSANZ Board and CEO to maintain the transparency of FSANZ decision-making.

The Food Regulation Sub-Committee (FRSC) and FMM processes leading to amendments to the FSC are not as transparent. Advice from individual jurisdictions' bureaucracies to their Ministers on the FMM is not published and the outcomes of FMM deliberations are provided only as high-level communiqués following each FMM meeting.

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<sup>13</sup> US Food and Drug Administration, 1997. Food Safety from farm to table. A National food safety initiative report to the President. Dairy, Food and Environmental Sanitation, 17 (9): 555-574.

FRSC engages sporadically with stakeholders where the priorities of the food regulatory system are described, but there is limited information shared about decisions on FSC amendments.

It is also unclear whether the FMM decision-making delegations proposed would be intended to go to FRSC members (which would seem logical) or to other senior bureaucrats in government departments. In either case, the AFGC opposes the proposal as it would perpetuate the opaqueness of food regulation decision-making of the jurisdictions.

#### **Recommendation 10.**

The AFGC recommends that the FSANZ not be amended to allow the FMM to delegate decision-making to senior bureaucrats in the jurisdictions.

#### **FSANZ Board selection**

The AFGC notes that the IA cites a previous review of FSANZ's Board appointment processes which provided recommendations to:

*“.....better align FSANZ with contemporary approaches to governance and merit-based selection of Board members”.*

The AFGC agrees that the FSANZ Board composition should align with contemporary good governance practices. When members of a Board are nominated by representative organisations their appointment may come with an implicit understanding that they pursue specific food regulation outcomes. This is inconsistent with the concept of an independent Statutory Authority. Board members' primary duty is to support and guide FSANZ to achieve the objectives, purposes, and functions specified in the FSANZ Act.

Allowing FSANZ Board members to be selected from the open market would result in a skills-based, independent Board more able to make decisions quickly. This, in turn, would contribute to streamlining FSANZ processes, and align with the overall objective of making the food regulatory system more agile and responsive.

The AFGC notes that consistent with good governance principles the FSANZ Board should conduct its own succession planning and appointment processes with new appointments selected based on how their skills complement those of other Board members to ensure the full suite of Board skills and expertise is maintained. The AFGC also notes that Board appointments would remain at the discretion of the Minister of Health and Ageing.

#### **Recommendation 11.**

The AFGC recommends that FSANZ Board appointment processes be reformed to align with contemporary good governance principles resulting in an open market recruitment of a skills- and expertise-based Board.

## Further comments and observations

### a. Second last paragraph, p12

The IA correctly notes changes that have occurred in consumer behaviour and food options since the 1990s and makes the statement:

*“This means that individuals can be exposed to higher volumes of food additives and other ingredients compared to in the past, which can have a compounding effect on safety and long-term health outcomes”.*

A similar statement is made later in IA (last para p32 - p33) where it is stated:

*“...various studies have linked increased exposure to food additives over time with health issues such as asthma, attention deficit hyperactivity disorder, heart difficulties, cancer and obesity.”*

The AFGC is not aware of a substantial body of evidence supporting either statement and considers both to be incorrect. Furthermore, the statements cast serious doubt on the effectiveness of FSANZ’s past and current food additive safety assessment capabilities.

**Only the second statement carries a citation, and the AFGC assumes both are [mis-]informed by it, as the citation has been retracted by the journal in which it was published.**

The retraction notice<sup>14</sup> states:

*“...indicators of systemic manipulation of the publication process.....undermines our confidence in the integrity of the article’s content...”*

It would be appropriate for the IA to be amended to ensure this error of facts, or any conclusions drawn from them, do not erroneously influence the final recommendations of the current consultation.

### Recommendation 12

The AFGC recommends that any recommendations pertaining to the amendment of the FSANZ Act, or FSANZ’s operational processes not be based on the misconception that there is strong evidence of risk to public health and safety from the accumulative or long-term health impacts of FSANZ-approved food additives in the Australian and New Zealand food supply.

### Last paragraph, p20

The IA stated that the Terms of Reference for the review called for a focus on:

*“...being consistent with best practice regulation and standard-setting”.*

<sup>14</sup> [Retracted: Toxicological and Teratogenic Effect of Various Food Additives: An Updated Review \(hindawi.com\)](https://hindawi.com/doi/10.1155/2023/1234567)

The AFGC strongly supports the principles of best practice regulation, and these are concisely stated in the Regulatory Impact Analysis Guide for Minister's Meetings and National Standard-Setting Bodies<sup>15</sup>.

Important in the considerations when setting standards is the articulation of a clear problem statement, an obligation to examine all policy options to address the problem (i.e. beyond regulation), and as far as possible providing a positive benefit/cost analysis.

The AFGC supports the IA identification of 4 Best Practice Elements but with the qualification that they should not be considered alternatives to the principles of best practice regulation as currently adopted by Australian governments.

#### **Recommendation 14.**

The AFGC recommends that the 4 best practice elements of regulatory systems identified by the Impact Analysis not diminish the important principles of best practice regulation as detailed in the Federal Government's *Regulatory Impact Analysis Guide for Minister's Meetings and National Standard Setting Bodies*.

#### **Last paragraph, p 21**

The IA discusses the opportunities for recognising indigenous cultures within the food regulatory system. The AFGC is supportive of further exploring how Australia's food regulation system might be reformed to encourage greater indigenous culture engagement in a similar way to current practices in New Zealand.

The AFGC supports further consultation addressing the practical aspects of providing specific recognition of indigenous cultures in the FSANZ Act, FSANZ operations and the wider food regulatory system, although this would need further resourcing of FSANZ.

#### **Recommendation 15**

The AFGC recommends that further consultation be conducted to determine how best to incorporate recognition of indigenous culture into the FSANZ Act, and the practical implications on FSANZ's operations including the impact on FSANZ's resource requirements.

#### **Second last para, p30**

The IA concludes its discussion on the purpose and objectives of FSANZ<sup>16</sup> by noting that all but one of the 101 standards submitted to the FMM have been accepted and that FSANZ publishes all supporting documents supporting their decisions.

<sup>15</sup> [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standards Setting Bodies \(pmc.gov.au\)](https://pmc.gov.au/regulatory-impact-analysis/guide-for-ministers-meetings-and-national-standards-setting-bodies)

<sup>16</sup> 3.1.7 Policy Problem 1. The purpose and objectives of FSANZ are not clear, p28.

The AFGC agrees that the amount of information that FSANZ provides supporting its decisions is copious providing a high degree of transparency for stakeholders. FSANZ also goes to considerable lengths to indicate how they have given regard to Ministerial policy guidelines, when relevant. Much of the information is highly technical which in many instances requires the reader to have a high degree of technical expertise. This, however, does not support the statement in the IA that:

*“These resources.....are demonstrably either insufficient or inaccessible”*

The statement is inaccurate and should be corrected.

#### **Recommendation 16**

The AFGC recommends that the Impact Analysis concludes that FSANZ provides comprehensive reasoning supporting its decisions, including how it gives regard to Ministerial policy guidelines, as demonstrated by its strong track record in having its recommendations accepted without review by the Food Ministers Meeting.

#### **Second last paragraph, p37**

The IA states:

*“While the FMM and FSANZ have different roles, priorities, accountabilities and operations – which may mean a shared vision of system priorities is not feasible (or necessarily desirable..)”*

The AFGC would argue that it is not only desirable but critical that the FMM and FSANZ have a shared vision of system priorities. According to the Food and Agriculture Organization a national food control system<sup>17</sup> (which in Australia is the food regulatory system):

*“...ensures that food available within a country is safe, wholesome and fit for human consumption, conforms to food safety and quality requirements and is honestly and accurately labelled as prescribed by the law. As such, food control systems protect the health and safety of consumers and help assure the safety and quality of foods being traded both nationally and internationally.”*

To be effective, national food control systems require appropriate legal and institutional structures and adequate human and financial resources. They are informed by scientific evidence and facts, reflecting the technical complexity of interactions between food production, nutrition and human health. These conditions should favour alignment of priorities, not encourage misalignment. A lack of alignment regarding priorities between decision-makers would undermine the effectiveness of the food control system leading to poor outcomes for all stakeholders.

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<sup>17</sup> [Food control systems | Food safety and quality | Food and Agriculture Organization of the United Nations \(fao.org\)](https://www.fao.org/food-control-systems/)



**Recommendation 17**

The AFGC recommends that amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the Food Ministers Meeting.

**Last section, p42**

The IA rightly states that to enable critical reforms of the regulatory system support of the Australian, New Zealand and State and Territory governments, FSANZ and the food industry is required. Concerning the latter, the IA suggests the industry:

*“Could disrupt its implementation through lobbying and public criticism if not supportive of the reforms.”*

The AFGC is concerned that the IA fails to mention that the public health sector and the consumer movement are also stakeholders of the regulatory system, and they could be highly critical of proposed reforms.

The industry and the AFGC as the peak national body, has a strong, and demonstrable track record of working with the government to secure good policy and regulatory outcomes.

The AFGC requests reports of the current consultation and future documents related to the review of the food regulatory system broadens the range of stakeholders that may influence the implementation of regulatory reforms.

**CONCLUSIONS**

This is the 3<sup>rd</sup> formal submission the AFGC has made to the ongoing review of the ANZ food regulatory system. The current consultation’s Impact Analysis starts by confirming the ANZ food supply is safe and of high quality as a result of the well-functioning food regulation system, but that it requires urgent and substantial modernising.

The AFGC is hopeful that this submission will provide some direction to the next steps considering reform of the FSANZ Act will result in a step-change improvement in FSANZ operations which includes:

- clear appreciation of the public benefit of food regulation through government resourcing FSANZ as Australia’s and New Zealand’s leading repository of food and health scientific and regulatory expertise, with industry cost recovery restricted to when there is a specific service provided (e.g. expedited approvals, exclusivity),
- multiple pathways to regulatory approvals based on rigorous risk-based assessments and utilising the full range of regulatory measures (food standards, codes of practice, guides) available to FSANZ, and
- consistency in approach across food regulatory areas (composition, processes, labelling) which provides greater certainty to the industry regarding the formal processes to receive approvals for innovations in products and claims that can be made about their consumer benefits.

The AFGC stands ready to provide further clarification or feedback on any of the positions expressed in this submission as the Inquiry proceeds.

For further information about the contents of this submission contact:

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## Questions

### Section 3 - The problems to solve

This section refers to questions in *Section 3 - The Problem to Solve* within the Impact Analysis, commencing on Page 20.

### 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

The Australian Food and Grocery Council (AFGC) considers that the main problems, and stakeholder perceived problems, with the FSANZ Act, have been identified. The AFGC appreciates the attempt in the Impact Analysis (IA) to prioritise the issues through a quantitative methodology. Unfortunately, the methodology is not fully described in the IA. The only description is “...ratings have been compiled through an assessment of research and stakeholder engagement.” Further information should be provided such as:

- Who did the assessing? Was it a group of experts with legal, food industry, food science and public health skills?
- Were the ratings developed against an external standard or were the issues rated against each other, and then scaled? Was the scaling linear?

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

Free text box, no character limit

There are very sophisticated methodologies available for describing and analysing objectively, through questionnaires and surveys, issues which cannot be quantified directly. Derived from the psychology discipline, such methodologies can be used to assess the views, opinions and concerns of individuals and groups of individuals. They usually commence, however, with a clear research question, or series of research issues to be resolved. Depending on the issues, surveys or questionnaires will be developed to provide objective measures. For some issues, survey participants may be drawn at random from the population, on other occasions the survey may be of population sub-groups, or for specialist issues trained panels, or panels of experts may be employed.

There is no evidence provided in the IA that a robust methodology was established to prioritise the problems identified. Rather, the impression is given that the rating system was developed as an afterthought to attempt to prioritise issues identified.

### Section 3 - The problems to solve (Ratings)

The questions on this page refer to the ratings listed in the Impact Analysis from page 30.

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

*Please select only one item*

- ☐ Yes
- ☒ No
- ☐ Prefer not to respond / I don't know

3 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

The AFGC would rank the policy problems as follows:

1. Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible. Under-resourcing is FSANZ's greatest challenge along with legislated processes and decision making which leads to inefficiencies. These issues are addressed under this policy problem.
2. Policy Problem 3 | Elements of FSANZ's operations are inefficient. FSANZ's resourcing problems are also described again under this policy problem.
3. Policy Problem 4 | Gaps and duplication of efforts challenge system agility. Operational issues are highlighted under this policy problem. They can be addressed if other agencies in the food regulatory system are committed to aligning with FSANZ's roles and functions.
4. Policy Problem 1 | The purpose and objectives of FSANZ are not clear. This policy problem is derived from [some] stakeholders not familiarising themselves with the current arrangements which show that FSANZ can, and has, addressed long-term public health issues through amending the FSC.

#### Section 5 - Options for reform

This section refers to questions in *Section 5 - Options for reform* within the Impact Analysis, commencing on Page 44.

#### Component 2.1

Component 2.1 relates to the *Purpose and objectives of FSANZ*. This section contains questions for Components 2.1.1 to 2.1.3 on pages 49 to 50.

#### Component 2.1.1

Component 2.1.1 | The definition of 'protection of public health and safety' within the Act could be clarified to be in line with the current policy guidance (Page 49)

4 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?

Please select only one item

- Yes  
☒ No  
 Prefer not to respond / I don't know

Additional comments (optional)

The AFGC rejects the notion that 'confusion' among some stakeholders regarding FSANZ's capability to address long-term issues is derived from the objectives of the FSANZ Act being unclear.

The AFGC contends that the confusion has arisen from stakeholders not being familiar with the current powers FSANZ has, and has exerted, as a standards-setting body to address long-term health issues.

4 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?

Please select only one item

- Yes
- ☒ No
- Prefer not to respond / I don't know

Additional comments (optional)

The IA states (para 4, page29):

*"In practice, food regulatory measures established by the Act are already being used to protect both short- and long-term health."*

Assuming FSANZ maintains its independence as a Statutory Authority and that its development of food standards is based on the best available scientific evidence and fact base, there is no reason why the clarification would materially affect FSANZ's approaches to applications and proposals and the factors to which they give regard.

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

Please select only one item

- Positive
- ☒ Neutral
- Negative
- Prefer not to respond / I don't know

Additional comments (optional)

The AFGC considers there would be very little impact as the clarification would not affect the way FSANZ operates to any great extent, and not affect the overall levels of public health protection which is already at a very high level as recognised in the IA.

Examples of Standards which directly target specific public health issues (as opposed to public safety) include:

*Standard 2.1.1- 5 Cereal and Cereal products* which requires all wheat flour for bread making to be fortified with folic acid between 2 and 3mg/kg. This is to reduce the incidence of neural tube defects in the newborn – a clear *maternal* diet-related public health issue, rather than a food safety issue,

*Standard 2.1.1 – 6 Cereal and Cereal products* which requires iodised salt to be used for bread making. Noting that where salt is ordinarily used, the requirement is to replace the salt with iodised salt. This is to reduce iodine deficiencies in the general population which is a clear *chronic* diet-related public health issue.

*Standard 1.2.8 – Nutrition Information requirements* which mandates a Nutrition Information Panel on packaged food and other nutrition information requirements. This is to help consumers make informed choices and construct healthy diets – a clear long-term public health issue.

This demonstrates that FSANZ already targets public health issues in the development of Standards.

Component 2.1.2

Component 2.1.2 | There could be greater clarity around how ministerial policy guidance is reflected in the development of food standards (Page 49)

6 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?

*Please select only one item*

- ✓ Yes  
No  
Prefer not to respond / I don't know

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

Free text box, no character limit

There is already a substantial amount of information which is published during the standards development process which includes the consideration of the alignment between the Ministerial Guidelines and the Food Standards Code amendments.

The AFGC makes the point, however, that it is incumbent upon all stakeholders to make sure they familiarise themselves with the institutional arrangements and operations of the food regulatory system and how its outcomes are disseminated. Without this, stakeholders will be at a disadvantage and less able to sensibly engage with the standard development process.

The AFGC considers, however, that some consideration could be given to how changes to the food regulatory measure might be more effectively communicated. For example

1. In the documentation FSANZ prepares which summarises the evidence and bases of its recommendations to amend (or not) the FSC more detail could be provided on which Ministerial Guidelines it considered, and which parts of the guideline were relevant to the application. FSANZ could also describe the reasons for it both aligning closely with the guideline, or deviating from the guidelines when this occurs, and
2. The Ministerial Communiqués and other documents which are released after meetings of the Food Ministers' Meeting (FMM) could provide more specific information as to which policy guidelines had been considered, and how the amendment aligned, or did not align, with the relevant guideline.

Component 2.1.3

Component 2.1.3 | Language within the Act could be updated to be more culturally inclusive (page 50)

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

*Please select only one item*

- ✓ Yes  
No  
Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that there is scope to amend the FSANZ Act to provide FSANZ with the opportunity to recognise Indigenous culture and expertise.



The AFGC considers these warrant further extensive consultation including discussion of the potential resource requirements of FSANZ to effectively address Indigenous culture issues.

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

*Please select only one item*

- ☐ Yes
- ☐ No
- ☒ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no views to express at this stage.

#### Component 2.1

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

*Please select only one item*

- ☐ Yes
- ☒ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

#### Component 2.2

Component 2.2 relates to *Reform standing-setting*. This section contains questions for Components 2.2.1 to 2.2.6 on pages 51 to 56.

##### Component 2.2.1

Component 2.2.1 | A risk-based framework and approach could be introduced to guide the development of food regulatory measures (Page 51)

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

FSANZ already takes a risk-analysis approach to assessing applications. However, the AFGC considers there is a strong case for the development and implementation of a more explicit practical risk-analysis framework which determines the degree of regulatory oversight and requirements of paths to market for new foods, new technologies and new claims about them.

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

The AFGC supports the proposed Indicative risk framework (Impact Analysis, Table 10, p 51), but considers the following additional factors should be explicitly considered in the framework *vis*:

- is the subject substantially the same as an issue previously considered by FSANZ? If so, a fast-track pathway should be considered. For example, FSANZ has approved close to 100 foods derived from gene technology most of which are very similar in the way they are developed. A fast-track approval process should apply in these cases.
- has the subject already been assessed as having negligible risk by an overseas relevant, competent authority (such as Health Canada, the Food and Drug Administration, the European Food Safety Authority)?
- has regulatory approval been provided by an overseas, relevant authority, and has the approval included risk-management provisions?
- are there risks to Australia's reputation which might impact trade or implications to Australia's position as a signatory to the World Trade Organization agreements? and
- has an established presence in overseas markets been confirmed with no public health or safety concerns being identified?

Similarly, a FSANZ risk-based framework could extend to conducting a risk assessment of the applicant when the application is initially considered of moderate risk.

For example, if the applicant had established a track record of submitting applications of similar complexity which met all the requirements of the FSANZ Application Handbook, had been assessed and recommended with no requests from FSANZ for further information, and had no objections or concerns raised from stakeholders (particularly jurisdictions), and FFM approvals had readily been provided, that applicant, as well as the application, would qualify as being 'lower risk'. As a result, the application might be directed down a 'low-risk' pathway to approval.

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

*Please select only one item*

- ✓ Positive
- Neutral
- Negative
- Prefer not to answer / I don't know

Free text box, no character limit

The benefits of such a framework would include:

7. stakeholder alignment on the necessity, or not, for regulatory interventions and the nature and degree of attention for proposed interventions and amendments (applications or proposals) to the FSC
8. more efficient allocation of FSANZ staff resources
9. enhanced enforcement priorities and resource requirement decisions by the jurisdictions
10. greater confidence for public health and consumer groups that regulatory resources are being devoted to priority areas
11. greater certainty for the industry in the outcome when seeking to bring innovative food technologies, novel foods and claims to market,

12. a surer path to proportionate regulatory responses from the food regulatory system consistent with best practice regulation principles, and
13. simpler FSC amendments would be more accessible to small businesses due to reduced resource and cost requirements of preparing applications.

#### Component 2.2.2

##### Component 2.2.2 | New pathways to amend food standards could be introduced (Page 52)

14 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Many innovations (new foods, food additives, processing aids) are developed and commercialised overseas. They are approved by competent authorities employing risk-based approaches to assess scientific evidence and fact-based in the public domain with additional information and technical data provided by the innovating company (some of which may be commercial-in-confidence).

FSANZ already has Memorandums of Understanding with overseas regulatory authorities in the USA, UK, and EU and has reported a close collaboration on some issues with Health Canada.

Clearly, exchanging information would be advantageous to FSANZ when assessing applications for new technologies which have already been approved overseas. It has the potential to spare FSANZ resources; simplify the regulatory assessment process; provide more certainty for the industry; improve processes and products for the industry, and provide better products, sooner for the benefit of consumers.

15 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that through formalising links with international regulatory agencies, FSANZ could establish bi-lateral or multi-lateral agreements harmonising risk-based approaches necessary for, and the conduct of, pre-market approvals.

By specifying the key elements of such approaches regulatory agencies could realise substantial efficiency gains in their individual operations whilst strengthening the overall rigour of approval processes and enhancing confidence that truly proportionate regulatory response would result.

As a result, the industry would have more certainty of regulatory outcomes for its innovations, and the community and government would have more certainty that appropriate levels of protection of public health and safety were being applied.

In reality, recognising international standards would never be fully 'automatic'. FSANZ should maintain an oversight process.

The AFGC considers it important that some, if limited, opportunity for stakeholders to be consulted or raise concerns about an application should be retained for FSANZ's 'automatic' approvals of international standards. This might be as simple as providing a short review period of the standard prior to FSANZ recommending it to the Food Ministers' Meeting (FMM) to allow objections or concerns to be raised.

16 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that a risk-based approach would include a pathway for very low-risk innovations. A triaging mechanism comprising a series of questions would be one option for establishing a minimal check pathway.

17 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that the FSANZ Act could be amended to include principles which explicitly permit FSANZ to use risk-based approaches for handling applications and proposals.

The wording, however, will need to be carefully crafted to ensure close alignment with FSANZ's objectives. Furthermore, the principles must not be too prescriptive, with an outcomes focus.

FSANZ needs to be able to exercise its judgement and be flexible against the backdrop of a constantly revising body of scientific evidence around the nexus of food, nutrition and health.

FSANZ also should be permitted to create other pathways to amend food standards to contribute to future-proofing the FSANZ Act by maintaining an agile food regulatory system in response to future food industry innovation.

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

*Please select only one item*

- ☒ Positive
- ☐ Neutral
- ☐ Negative
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Clearer, risk-based pathways to regulatory approvals for manufacturing processes, products, and product claims will incentivise AFGC members to innovate. This will help maintain and enhance their competitiveness in global markets (domestic and overseas) and contribute to the resilience of the food manufacturing sector overall.

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers there are a number of risk-based pathways to regulatory approval. They include:

1. Greater use of Codes of Practice. Complying with a voluntary industry Code, voluntary (for signatories) prescribed industry Code or mandatory prescribed industry-prescribed Code are all examples of lower-risk pathways to regulatory approval.

There are a number of ways in which Codes of Practice may operate. For example, the FSC could state that for a certain issue (e.g. low-risk voluntary labelling statements) companies should comply with a specified industry-developed Code. This would provide authority in the Code requiring compliance.

The AFGC would welcome FSANZ giving more consideration to the use of Codes of Practice as an alternative pathway to food standards as an efficient regulatory measure.

2. Notification. The current notification system for general level health claims could be extended to other low-risk issues. For example, processing aids could be moved to a notification system with companies required to hold technical data substantiating that the processing aid has its declared technical function in a particular food manufacturing process for which approval is being claimed, and that is safe. This could be modelled on the USA's FDA Generally Recognized as Safe notification system.

3. International approvals. A pathway where FSANZ reviews and concurs with the international approval documentation would be appropriate for low- medium risk applications.

4. As described in an earlier response (above) a FSANZ risk-based framework and pathway to approval could include conducting a risk assessment of the applicant. For example, if the applicant had established a track record of submitting applications which met all the requirements of the FSANZ Application Handbook, had been assessed and recommended with no requests from FSANZ for further information, and had no objections or concerns raised from stakeholders (particularly jurisdictions), and Food Ministers'

Meeting approvals had readily been provided, that applicant, as well as the application, would qualify as being 'lower risk'. As a result, the application might be directed down a 'lower-risk' pathway to approval.

### Component 2.2.3

#### Component 2.2.3 | Decision-making arrangements could be streamlined (Page 54)

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Delegating decision-making from the FSANZ to the CEO would certainly be more efficient and particularly so for low-risk applications. The AFGC supports proposals in the IA for this delegation. It would, however, have a minimal effect on FSANZ's flexibility. FSANZ legislated processes need to be amended to materially increase FSANZ's flexibility.

The AFGC doubts whether delegating decision-making from the Food Ministers' Meeting (FMM) to FRSC members or other senior bureaucrats would improve flexibility or efficiency. FRSC already plays a central role in the food regulatory (policy) system.

Unlike other elements of the system, FRSC dealings are generally behind closed doors with little stakeholder engagement and limited reporting of their joint deliberations. There is also no record of the individual briefings FRSC members or other bureaucrats provide to their respective ministers. Thus, delegating decision-making does not provide more flexibility or efficiency but risks introducing more opaqueness to the decision-making process.

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

Free text box, no character limit

The key determinants for reliable decision-making include:

1. clearly defining the nature and boundaries of the risks being assessed. In the case of food standards, there is an enormous body of knowledge contributing to the understanding of food safety hazards and diet-related risks to human health
2. methodologies for quantifying risks [associated with food consumption – type; amount] based on exposure to the risk both at the individual and population level. FSANZ has sophisticated toxicology, microbiology and nutrition risk assessment processes which include risk assessments in population subgroups based on dietary modelling
3. incorporating the understanding of basic biological processes and the concept of grades of evidence and certainty informed by appropriate statistical analysis
4. agreed and consistent risk acceptance levels incorporating a cost/benefit assessment

5. a risk assessment and risk-management process which can minimise the absolute risk of any decision made
6. a multi-skilled workforce possessing the experience, expertise and understanding of their legislated authority, allowed to manage the decision-making processes without fear or favour from outside influences, and most importantly
7. clear identification of where the authority to make decisions is delegated, noting that responsibility is not able to be delegated. Thus, the ultimate responsibility for decisions to amend the FSC would remain with the Food Ministers' Meeting (FMM).

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

*Please select only one item*

- Positive
- ☒ Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The change in streamlining decision-making would assist AFGC members (i.e. food manufacturing companies) by accelerating the speed of approval of low-risk applications.

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

Free text box, no character limit

In the case of delegating decision-making to the FSANZ CEO, the AFGC considers the CEO should have broad-ranging expertise encompassing a good understanding of the scientific disciplines informing the FSANZ approval processes, an in-depth knowledge of the food system including the complexity of the food industry, a comprehensive understanding of the food policy and regulation institutional and legislative framework, and an appreciation of the political dimensions of food regulatory policy.

The AFGC does not support the Food Ministers' Meeting (FMM) formally delegating decision-making to FRSC members or other members of state and territory bureaucracies.

Notwithstanding this, the AFGC appreciates that the FMM is heavily reliant on advice from the bureaucrats and that the officers involved in that advice would collectively have the types of skills described above for the FSANZ CEO.

Component 2.2.4

Component 2.2.4 | Legislative change and greater guidance material could support bringing more traditional foods to market (Page 55)

24 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?

*Please select only one item*



- Yes  
No  
☒ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no considered views on this issue at this time.

25 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?

*Please select only one item*

- Yes  
No  
☒ Prefer not to respond / I don't know

The AFGC has no considered views on this issue at this time.

Component 2.2.5

Component 2.2.5 | FSANZ can be resourced to undertake more timely, holistic and regular reviews of standards (Page 55)

26 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?

*Please select only one item*

- ☒ Yes  
No  
Prefer not to respond / I don't know

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

*Please select only one item*

- ☒ Yes  
No  
Prefer not to respond / I don't know

Free text box, no character limit

Holistic reviews of food standards alone are restricted in their scope by legislation and the other parts of the food regulatory system. Holistic reviews of the Food Standards Code can therefore only cover issues such as whether specific existing approvals, permissions and restrictions are still warranted, and whether additional regulatory interventions are required. To some extent, this can be informed by FSANZ's role in surveillance of the food supply. This can also be informed by other testing of the food supply such as the National Residue Survey performed by DAFF. Additional data collection such as the incidence of foodborne disease or the number of food-related anaphylaxis cases may also indicate a need for greater regulatory intervention.

The reality is, however, that a substantial holistic review of food standards should be part of a review of the food regulatory system in its entirety.

While the current Review of the FSANZ Act is part of a broader review of the food regulatory system, the AFGC considers that by dividing the broader review into components an opportunity has been lost for some more holistic changes to the system. For example, providing FSANZ with an enforcement role for some components of the Code (e.g. labelling) should be within the scope of a system-wide review, but it is ruled out by the restricted scope of the review of the FSANZ Act.

The AFGC notes that even before the Impact Analysis consultation commenced, a number of issues identified in earlier consultations had been dismissed from further development. The AFGC supports some of the exclusions as they sit outside the food regulatory system and are well addressed in other policy and regulatory frameworks (e.g. food fraud, sustainability).

“Several ideas have been explored but formally excluded from further analysis by the Food Ministers’ Meeting (FMM). These include:

- The objectives of FSANZ could be expanded to recognise trade as a core goal FSANZ is designed to support.
- Criteria could be established in the Act that the FMM must meet to request a review of a draft regulatory measure.”

The AFGC encourages further consideration of both of these topics.

#### Component 2.2.6

Component 2.2.6 | Codes of Practice and guidelines could be increasingly used to complement food standards (Page 56)

28 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

29 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

In the 1990's there was a Code of Practice on Nutrient Claims jointly managed by FSANZ (when it was ANZFA) and the AFGC. It was relatively successful in moderating the nutrient content and function claims made by the industry. It fell into disuse when FSANZ was created and started to actively commence the development of a health claims standard. The AFGC recommended the continuation of a Code of Practice of nutrient claims and general level health claims, but FSANZ determined that it was necessary to regulate those claims along with high-level health claims. Standard 1.2.7 Nutrition, health and related claims was gazetted in 2013 which included the notification system for general level health claims and a 'level of evidence' bar.

This was a clear example of a Code of Practice system which could have been enhanced by being referenced in the FSC.

30 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

Codes of Practice or guidelines should be restricted to regulating low – moderate risk issues, with the latter requiring stricter codes. All codes do, however, require a management framework which is supported either by the government or by industry.

The framework should include a clear process with stakeholder engagement for the development of the Code, its positioning relative to other regulatory instruments (e.g. the Food Standards Code), mechanisms for its review, compliance, enforcement and sanctions provisions and complaint resolution procedures. These are the basic features for a Code of Practice to operate as a successful alternative to a food standard.

The Australian Competition and Consumer Commission (ACCC) has comprehensive information about Codes of Practice, both mandatory and voluntary, and how they work - <https://www.accc.gov.au/business/industry-codes>

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

*Please select only one item*

- ✓ Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

There are a number of successful Codes of Practice used by the food industry to guide industry to responsible behaviour which might otherwise require regulation. The overall impact is an alignment of community expectations and a reduction in regulatory burden for both industry and government enforcement agencies. Examples include the Australian Association of National Advertisers self-regulation marketing codes which includes a 'hands-off' independent complaints resolution mechanism under Ad Standards.

A further example is the *Grains & Legumes Nutrition Council's (GLNC) Code of Practice for Whole Grain Ingredient Content Claim*. In 2013, the GLNC, which is an industry association representing cereal manufacturers, established this voluntary Code which is intended to guide the use of whole grain ingredient claims, on food labels in Australia and New Zealand.

The Code provides clear, consistent messaging on the whole grain content of foods helping consumers make informed choices. It was developed in consultation with regulators and the wider community in response to the absence of a FSC standard to regulate the use of whole grain content claims on food labels. It is a model of how an industry code can work successfully as an alternative to black-letter law benefiting the industry, consumers, and government.

## Component 2.2

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

*Please select only one item*

- ✓ Yes  
 No  
 Prefer not to respond / I don't know

Free text box, no character limit

The Australian Competition and Consumer Commission (<https://www.accc.gov.au/business/industry-codes>) describes a spectrum of risk-based regulatory interventions comprising black-letter law (e.g. food standards), prescribed mandatory Codes of Practice, voluntary codes of practice and best practice guides.

FSANZ should have the flexibility of developing regulatory interventions which best suit the problem or issue to be addressed. It makes good sense from a regulatory policy point of view, it is consistent with the deregulation agenda which governments seek in trying to improve the efficiency of regulatory frameworks, and it helps to make industry sectors more productive.

### Component 2.3

Component 2.3 relates to *Efficient and Effective operations*. This section contains questions for Components 2.3.1 to 2.3.4 on pages 57 to 62.

#### Component 2.3.1

Component 2.3.1 | Outstanding recommendations from the 2014 review of the FSANZ Board could be implemented (Page 58)

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

*Please select only one item*

- ✓ Yes  
 No  
 Prefer not to respond / I don't know

Free text box, no character limit

Good governance practices recommend relatively small, independent, skills-based Boards. The AFGC supports this approach for FSANZ.

There is no doubt, the FSANZ Board should have individuals who collectively can cover a range of key scientific disciplines – consumer science, public health nutrition, food science, food safety etc., coupled with experience working in, and wide knowledge of, the agriculture, food and food retail industries. However, skills in finance, audit, risk management, and human resources are also important skills for a Board.

A smaller Board is more likely to come to unanimous decisions quickly improving efficiencies in the FSANZ processes. In addition, they are more likely to operate cooperatively and be open to innovative ideas for how FSANZ might operate.

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

*Please select only one item*

- ✓ Yes  
 No  
 Prefer not to answer / I don't know

Free text box, no character limit

The AFGC does not consider Board nominations should come from individual organisations. This could mitigate real or perceived views of Board members coming with their own fixed agendas determined by the nominating organisation.

Open market recruitment processes would greatly increase the pool of possible candidates resulting in the appointment of highly skilled individuals which increases the chance of appointing a Board with the full suite of expertise and experience required to oversee the operations of a complex organisation like FSANZ.

#### Component 2.3.2

Component 2.3.2 | The expedited approvals pathway could be removed to address workload prioritisation (Page 59)

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

*Please select only one item*

- Positive
- Neutral
- ☒ Negative
- Prefer not to respond / I don't know

Free text box, no character limit

Removal of the expedited pathway for applications would result in an extension of the average time of an application to be processed by FSANZ.

The payment of the fee affects neither the rigour of the approval assessment nor the outcome, rather just expedites when the assessment commences. The cost-recovered fee is justified to enable additional (staffing) resources to FSANZ so that the expediting the application (or applications where an exclusive capturable commercial benefit is conferred) does not impact FSANZ's ability to progress other applications and proposals on their work plan.

For companies, the main impact would be a greater level of uncertainty in the 'speed to market' for new products which require approvals. This can have a chilling effect on innovation with all the concomitant follow-on effects on competitiveness and productivity of the food manufacturing sector and reduced choice benefits for consumers.

#### Component 2.3.3

Component 2.3.3 | To generate more sustainable revenue, cost recovery could be expanded for work that benefits the industry (Page 59)

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

*Please select only one item*

- Positive
- Neutral
- ☒ Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The immediate impact of the levy would be an increase in food prices as manufacturers seek to pass on the cost of the levy and the additional administrative cost of paying the levy.

There would also be an impact on the Federal Government's budget associated with the costs of drafting and passing new legislation and then setting up the administrative processes for collecting the levy. There would be continued administrative costs associated with the ongoing collection of the levy.

The AFGC strongly opposes the IA suggestion of imposing an industry levy on the largest 5,000 food companies to meet the current estimated shortfall in FSANZ funding of \$10m p.a. based on:

4. **equity** – imposing a levy on a portion of the food industry based on arbitrary criteria (size of levy, turnover ranking of company) is fundamentally inequitable
5. **efficiency** – the \$10m FSANZ shortfall is relatively small compared to the overall Federal budget. It is likely that the bureaucratic cost of collecting the levy, and the cost to industry of paying it (setting up payment facilities etc) would surpass the amount collected, and
6. **practicality** – identification of the 5,000 businesses to be levied would be difficult as there is no database which identifies food industry businesses and ranks them by turnover. To be clear, the food businesses which are regulated by the FSC extend from primary producers to distributors, ingredient manufacturers, food product manufacturers and retailers (restaurants, hotels, pubs, clubs, fast food outlets, convenience stores and supermarkets). Identifying which businesses would be captured would be problematic in the extreme. Furthermore, there is no mechanism to collect the levy. According to the *Australian Government Cost Recovery Policy*<sup>9</sup> levies raised by statutory authorities such as FSANZ require separate Taxation Acts which themselves would have to align with the Government's broader taxation policy.

37 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

It is essentially impossible to introduce an industry levy that is fair, consistent and feasible to administer.

The food industry comprises businesses ranging from primary producers through to retail, with [almost] all players being covered by FSC requirements, and all of them benefiting (as does the wider community) from the food regulatory system. Attempting to impose a levy on a limited industry subgroup would introduce unfairness and inequity issues, depending on where the lines were drawn. This would lead to a lack of consistency and difficulties and greater costs in administration.

The public good nature of food regulation is well recognised, as the recognition that public funding of public good from the government's general revenue is cheaper than funding by industry levies. For an industry where there is no existing levy system, there will be a substantial administrative cost (Productivity Commission, *Towards levyanthan? Industry levies in Australia*, Appendix F: 15).

38 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

There is not an acceptable range for a levy rate given the anticipated high administrative cost and the resulting inefficiency, and inequity resulting from the levy should it be imposed.

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

Please select only one item

- Positive
- Neutral
- ✓ Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The current system provides flexibility for companies to consider the most efficient way to bring innovative products which might require regulatory approval to market. For some companies speed to market is not critical so removing the 'no fee' option would increase substantially their costs, assuming fee levels are similar to those currently imposed by FSANZ for expedited applications.

It should also be remembered that parties (individuals, and organisations) other than industry can lodge applications to amend the FSC. The imposition of a fee for all applications would be a barrier to those organisations as well.

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

*Please select only one item*

- Yes
- ✓ No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that attempting to design, launch, promote and sustain a commercial service would distract FSANZ from its core objectives and purpose.

Of the activities suggested in the IA, there are existing organisations in the private sector which are operating and are very successful at providing value for money. It is highly unlikely that FSANZ could do a better job and be profitable. In addition, there are significant conflicts of interest possibilities having a regulator both assessing regulatory approvals for a company and seeking to sell an additional service to the company.

Component 2.3.4

Component 2.3.4 | Some services could also be cost recovered from government agencies (Page 61)

41 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?

*Please select only one item*

- Yes
- No
- ✓ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC is not privy to the costs on FSANZ or other agencies of the current food recall arrangements and so is unable to comment.



42 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

The AFGC is not privy to the costs on FSANZ or other agencies of the current food recall arrangements and so is unable to comment.

43 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Free text box, no character limit

The AFGC is aware that on occasions the States and Territories request FSANZ to undertake work not directly related to applications. These may be associated with proposals FSANZ has raised or other projects.

The AFGC considers it appropriate that the States and Territories should fund these requests. This would impose a greater discipline on States and Territories reducing the chance of poorly considered requests which would unnecessarily expend FSANZ resources.

With regard to self-substantiated health claims it is recognised that FSANZ has greater expertise and resources to assess compliance, as it involves assessing the scientific and technical information supporting the notified health claim, but the jurisdictions have the legislated responsibility. This was recognised as an issue in 2013 when the Std 1.2.7 was gazetted.

The AFGC considers a sensible and pragmatic solution would be for FSANZ to provide a general level health claim 'monitoring service' to the jurisdictions for a fee, leaving the final decision on whether claims are compliant with the Standard to the jurisdictions.

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

*Please select only one item*

- ☐ Positive
- ☐ Neutral
- ☐ Negative
- ☒ Prefer not to respond / I don't know

Free text box, no character limit

45 How would this need to be implemented to be successful?

Free text box, no character limit

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

*Please select only one item*

Per recall Annual Levy Other

Free text box, no character limit

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

*Please select only one item*

- ☒ Positive
- ☐ Neutral
- ☐ Negative
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Greater consideration of resource impacts and costs to FSANZ when jurisdictions seek additional work on proposals or other regulatory activities.

48 How would this need to be implemented to be successful?

Free text box, no character limit

The Food Regulation Agreement would need to be amended to make it clear that there was an expectation on jurisdictions that they would fund FSANZ activities under certain conditions (to be specified). There would also need to be an amendment to the FSANZ Act permitting FSANZ to seek funds from jurisdictions under specified conditions for some activities.

### Component 2.3

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

*Please select only one item*

- ☐ Yes
- ☒ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

### Component 2.4

Component 2.4 relates to *Improving system agility*. This section contains questions for Components 2.4.1 to 2.4.7 on pages 62 to 66.

#### Component 2.4.1

Component 2.4.1 | Mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting could be implemented (Page 63)

## Related information FMM - Food Ministers' Meeting

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

*Please select only one item*

- ✓ Yes
- No
- Prefer not to respond / I don't know

51 How would this need to be implemented to be successful?

Free text box, no character limit

The AFGC recommends that amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the Food Ministers Meeting.

The fact that shortcomings have been identified during the review of the FSANZ Act and detailed in the Impact Analysis is a concern.

It should be noted that a range of approaches are already available, and some are currently used for consultation between FSANZ and FFM. Additional approaches are possible if there is goodwill to pursue them by the relevant parties. This does not require legislative change.

Regardless, it is imperative that whatever mechanism is explored, FSANZ maintains its independence as a Statutory Authority and its development of food standards is in alignment with the Act based on the best available scientific evidence.

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

Free text box, no character limit

The proposed factors for a joint prioritisation matrix should include:

1. public health statistics including emerging food safety issues both in Australia and overseas which may have regulatory implications,
2. an update on food industry economic trends and regulatory implications.
3. overseas regulatory development including approvals for novel technologies

Note that the agreement to the joint prioritisation matrix by FSANZ should not subvert or override FSANZ's independence as a Statutory Authority in decisions regarding particular applications or proposals.

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

Free text box, no character limit

FRSC is the main conduit between FSANZ and the Food Ministers' Meeting (FMM) so many of the 'operational' issues should be dealt with by better coordination between FRSC and FSANZ.

In addition, however, the AFGC suggests that the FSANZ Board meets with the FMM regularly – perhaps once a year so that there can be a better, more coordinated development of a food regulatory strategy.

#### Component 2.4.2

Component 2.4.2 | FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of food standards (Page 63)

Related information FMM - Food Ministers' Meeting

FRSC - Food Regulation Standing Committee

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

*Please select only one item*

Yes

No

☒ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC is not privy to the current arrangements for engagement between FSANZ and FRSC but ideally, it would be regular, driven by a common purpose of developing the best possible regulatory system, and cordial.

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

Free text box, no character limit

The AFGC has no comment.

#### Component 2.4.3

Component 2.4.3 | FSANZ could take guardianship over key food safety databases (Australia only) (Page 64)

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

*Please select only one item*

Yes

☒ No

Prefer not to respond / I don't know

Free text box, no character limit

FSANZ may have a role in maintaining some databases directly relevant to its function as a Statutory Authority. There are, however, many databases which have value beyond informing regulatory issues. There is no reason they cannot be held in other agencies -e.g. Department of Health and Ageing to inform health policy development.

FSANZ is already resource-constrained and the AFGC would recommend issues with resourcing its current objectives and functions should be resolved before additional responsibilities are added to its resource demands.

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

Free text box, no character limit

FSANZ should maintain records of food recalls (root causes, impact and resolution); food composition tables (including branded food composition) to support dietary modelling important for risk assessment purposes; and Total Diet Survey data.

Component 2.4.4

Component 2.4.4 | Further work could be done to establish information-sharing arrangements with international partners (Page 64)

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

*Please select only one item*

☒ Yes

☐ No

☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC strongly supports FSANZ maintaining strong links with internationally relevant, competent authorities. Information sharing strengthens FSANZ's ability to maintain and develop the FSC by keeping up to date on scientific and regulatory issues, best regulatory practices and emerging issues in the food industry which may have implications for public health and require regulatory attention.

58 What should be the focus of such information-sharing arrangements?

Free text box, no character limit

The AFGC considers the most valuable information sharing would be on comparing and aligning risk assessment and risk management approaches. This would underpin the confidence in recognition of approvals for new technologies and claims across international jurisdictions.

Component 2.4.5

Component 2.4.5 | Statements of intent could be introduced into the Food Standards Code to assist with interpretation and enforcement (Page 65)

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

*Please select only one item*

☒ Yes

☐ No

☐ Prefer not to respond / I don't know

Free text box, no character limit

The legal status of a Statements of Intent would need to be clarified. Statements of Intent in the FSC would only improve consistency of interpretation and enforcement if they were agreed upon by the jurisdictions during the development of standards, and not inserted after the standard was approved by the Food Ministers' Meeting (FMM).

It should be noted that jurisdictions will always retain the authority to interpret standards and their pursuant regulations as they see fit. Implementation is supposed to be coordinated by the Implementation Subcommittee for Food Regulation which may also have a role in finalising Statements of Intent.

Their development should be consulted on as part of the standards development process.

56 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 Statements of Intent should provide information which is not obvious from the reading of the FSC itself. It might paraphrase the standard in simpler words. It may also provide examples of how food products would comply with the standard.

It should be noted that in earlier forms of the FSC technical notes were included. These were later removed as they were considered to potentially undermine the meaning of the standards which would then make enforcement more difficult for the jurisdictions. So Statements of Intent need to be absolutely aligned in meaning with the FSC standards so that enforcement issues are not created.

Component 2.4.6

Component 2.4.6 | FSANZ could be resourced to develop, update and maintain industry guidelines to guide the interpretation of food standards (Page 65)

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

*Please select only one item*

☒ Yes

☐ No

☐ Prefer not to respond / I don't know

Free text box, no character limit

Any additional information or guidance to industry on how to comply with the FSC would be useful.

Such guidance would need to be developed with the participation of the jurisdictions as it would have to reflect their views on the interpretation of the FSC for enforcement purposes. Securing such participation and alignment might be difficult, but if guidelines were published and kept up to date, they would be a valuable resource for the industry.

58 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?

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

#### Component 2.4.7

Component 2.4.7 | FSANZ could collaborate more regularly with jurisdictional enforcement agencies (Page 66)

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

Clearly, collaboration between FSANZ and the enforcement agencies would help improve consistency.

This consultation on the Impact Analysis might include examining the nature of the relationship between FSANZ and the jurisdictions and what might be done to foster goodwill between the different agencies.

#### Component 2.4

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

*Please select only one item*

- ☐ Yes
- ☒ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

#### Section 6 - Net Benefit

This section refers to questions in *Section 6 - Net benefit* within the Impact Analysis, commencing on page 68.

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know



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

Free text box, no character limit

The AFGC has no data on the potential growth of a First Nations food sector.

61 What are the current delay costs to industry?

Free text box, no character limit

The AFGC has not collected data on this type.

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

*Please select only one item*

☐ Yes ☒ No

Free text box, no character limit

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

*Please select only one item*

☐ Yes  
☒ No  
☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

## Section 6 - Net Benefit (Option 2)

The questions on this page refer to the information in Option 2 in the Impact Analysis from page 72.

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

*Please select only one item*

☐ Yes  
☒ No  
☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

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

*Please select only one item*

~~Yes~~ No

Free text box, no character limit

The AFGC has no additional data.

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

*Please select only one item*

- ☒ Yes
- ☐ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The IA concedes the difficulties in identifying and assigning monetary values to the costs and benefits.

The AFGC agrees and notes that at best the benefit/cost ratios are indicative that Option 2 contains elements which provide a greater overall benefit than Option 1. This is not surprising as the IA describes a number of changes to the FSANZ Act and FSANZ operations which will improve the efficiency of developing food standards which would indicate the benefits of Option 2 are greater than Option 1, and the costs less.

Section 8 - Best option and implementation

This section refers to questions in *Section 8 - Best option and implementation* within the Impact Analysis, commencing on Page 87.

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

The questions on this page refer to the extent to which options solve the policy problems in the Impact Analysis from page 89.

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

*Please select only one item*

- ☐ Yes
- ☒ No
- ☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has concerns regarding the methodology - the IA attempts to objectively assess Option 1 (*status quo*) against Option 2 (many changes) by putting numerical values to the sub-elements of each Option.

Given the essentially subjective nature of assigning values, this approach is somewhat self-fulfilling. Suggestions for improvement listed under Option 2 are bound to score better than Option 1 arrangements.

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

*Please select only one item*

- ☐ Yes  
☒ No  
☐ Prefer not to respond / I don't know

Free text box, no character limit

Repeating the point made immediately above, the AFGC has concerns regarding the methodology - the IA attempts to objectively assess Option 1 (*status quo*) against Option 2 (many changes) by putting numerical values to the sub-elements of each Option.

Given the essentially subjective nature of assigning values, this approach is somewhat self-fulfilling. Suggestions for improvement listed under Option 2 are bound to score better than Option 1 arrangements.

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

The questions on this page refer to the delivery risk in the Impact Analysis from page 94.

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

*Please select only one item*

- ☐ Yes  
☒ No  
☐ Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has concerns that the categorisation may be mistaken for a robust objective assessment of the Options and a misinterpretation that they are a reliable basis for further development of Option 2 and recommendations for amendment of the FSANZ Act.

For example, the analysis of the option for an industry levy is simplistic and fails to consider the well-established principles of taxation to which Australian governments [generally] adhere. Apart from the inequity of a tax system which relies on an arbitrary cut-off (which the IA has proposed) there is no consideration of the administrative costs of collecting the levy. This is a major omission which undermines the sole argument supporting the industry levy – namely that it is an alternative to government funding.

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

*Please select only one item*

- ☐ Yes  
☒ No  
☐ Prefer not to respond / I don't know

Free text box, no character limit

As stated elsewhere in this consultation, the AFGC has concerns with the methodology which assigns objective (i.e. numerical) measures to issues based on a subjective opinion. Those concerns are compounded when the measures are then used as overall ratings for prioritising further work or recommendations.

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

*Please select only one item*

The AFGC has no further comment.

- Yes
- ☒ No
- Prefer not to respond / I don't know

Free text box, no character limit

Other comments

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

*Please select only one item*

- Yes
- ☒ No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

Do you want this submission to be treated as confidential?

NO

*Please select only one item*

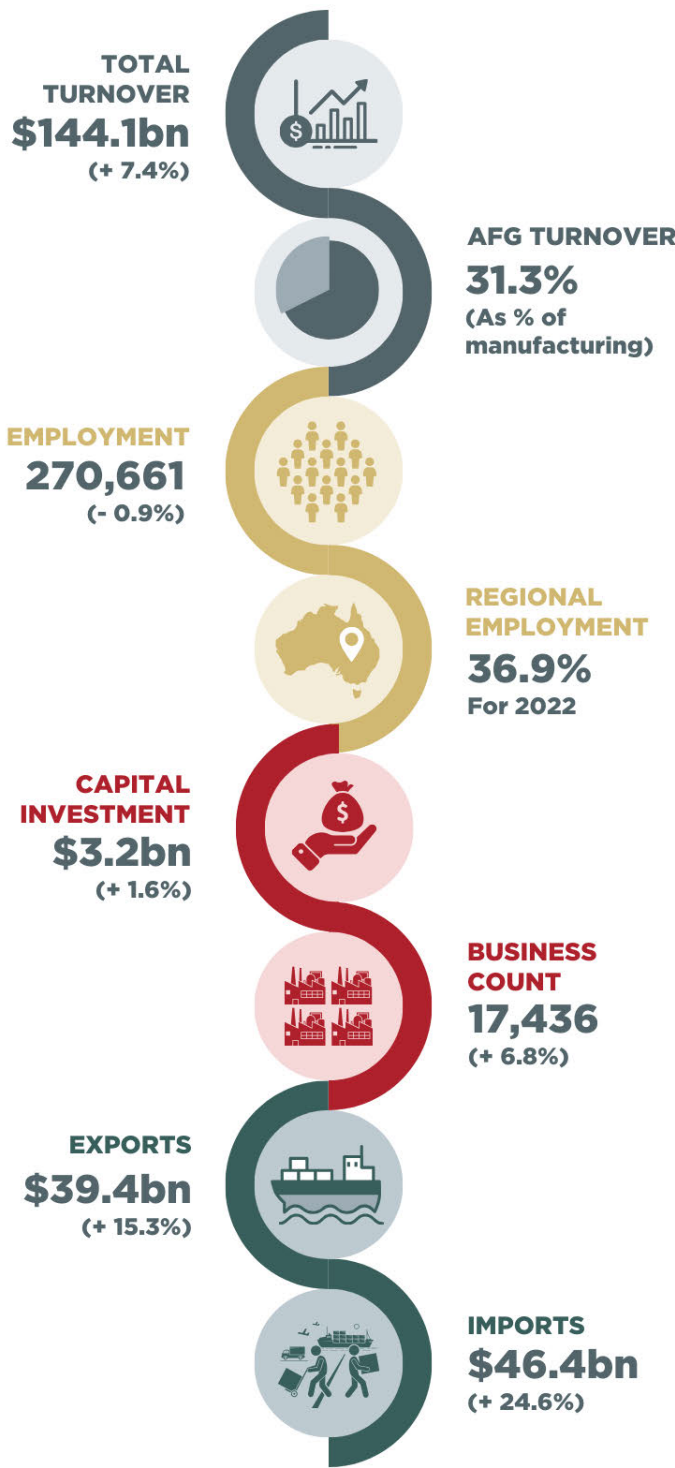
- Yes. The entire submission is confidential
- Yes. Some parts of the submissions are confidential No.

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

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# State of Industry 2021-22

AUSTRALIAN FOOD & GROCERY COUNCIL



AUSTRALIAN FOOD & GROCERY COUNCIL

The figures on this page exclude the fresh food sector and are based on 2021-22 ABS data.  
1: This is total number of employees, head count basis and does not include seasonal employees.  
2: Gross fixed capital formation for food, beverage and tobacco manufacturing subsector is taken as indicator of capital investment.