

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 12:03:59

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Chelsea Hunnisett

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Planetary Health Equity Hothouse

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

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

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The PHEH joins public health and consumer advocate colleagues in their concerns regarding the stated purpose of the Review. The Executive Summary of the Impact Analysis states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity". Given this, the main purpose of this review is unclear. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the Impact Analysis, resulting in the absence of its inclusion in the methodology.

The PHEH joins public health and consumer advocate colleagues in their concerns regarding the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation. The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the FSANZ Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This concern has been raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). This in addition to ongoing concerns being raised

regarding conflicts of interest in developing food regulation more broadly.

The current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step, it is insufficient to deal with the actual policy problem. As a result, the entire Impact Analysis fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this, the PHEH join public health and consumer advocate colleagues in proposing that a Public Health Test be incorporated into the Act (see refer to submissions by Food for Health Alliance, The George Institute for Global Health).

The PHEH join public health and consumer advocate colleagues in their concern regarding the presentation of Options 1 and 2. The Impact Analysis presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. The PHEH supports responses to this consultation that reflect this, noting that many reform elements presented by the Impact Analysis as part of Option 2, are similarly available under Option 1.

The PHEH joins public health and consumer advocate colleagues in concerns that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

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

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As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". To that end, it is crucial the Act includes responsibility for food systems security in the face of climate change via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system can play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement are fulfilled and can safeguard food security. A full review of food security needs should be undertaken; however, the initial work of the food regulatory system can occur via:

- Supporting consumers in sustainable food choices via labelling;
- Incorporating future warming scenarios into applications for food innovations (e.g. GM approvals);
- Incorporating mandatory food safety standards and monitoring during extreme weather events and for future warming scenarios; and,
- Consideration of evidence of harms from commercial determinants of poor nutrition and public health.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society, industry and commercial entities, and other government agencies and departments. Through the expansion of FSANZ's responsibility via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory need food security requires.

Section 3 - The problems to solve (Ratings)

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

Not Answered

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

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Yes. This definition should consider a broad, systems approach to short- and long-term population health risks when developing food standards including food borne illnesses, food security and nutrition as a result of climate change and future warming scenarios. The remit of FSANZ, under the Act, should facilitate the food regulatory system to be able to respond to the climate crisis, and therefore have a broad definition in which to act.

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

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act. The inclusion of the definition clarifies categorically for external stakeholders FSANZ's role and will not change the requirement that they consider long-term health.

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

Not Answered

Additional comments (optional):

By clarifying the definition, FSANZ will have authority to proceed on evaluating regulation through a more holistic, systems-based approach to short- and long-term food security. The definition can also support Food Ministers to execute their responsibilities in a considered and future proofing paradigm, whereby food security throughout the life course is paramount. Food security should be understood as the availability of affordable, low carbon and healthy food products, and a thriving sustainable agriculture and food manufacturing system.

A global food crisis is looming — fuelled by conflict, climate impacts, water shortages, and the COVID-19 pandemic — which has resulted in rising prices of food, fuel, and fertilizer. Hundreds of millions of people around the world remain hungry and experience malnutrition or nutrient deficiencies. It has never been more important that FSANZ is equipped with an Act that facilitates public health needs and removes conflicts of interest within the regulatory system.

Component 2.1.2

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

Not Answered

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

Free text box, no character limit:

Component 2.1.3

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

Yes

Free text box, no character limit:

Yes. The PHEH joins public health and consumer advocate colleagues in calling for FSANZ to consult specifically with First Nations and Māori people and experts, and to be guided on possible provisions and language changes that are culturally appropriate and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of First Nations people in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

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

Not Answered

Free text box, no character limit:

Component 2.1

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

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.2.2

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

Not Answered

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.2.3

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.2.4

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

Not Answered

Free text box, no character limit:

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?

Not Answered

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.2.6

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

Not Answered

Free text box, no character limit:

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

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

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.2

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

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.3.2

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

Not Answered

Free text box, no character limit:

Component 2.3.3

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.3.4

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.4

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

Not Answered

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Not Answered

Free text box, no character limit:

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:

Component 2.4.6

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Component 2.4.7

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

Not Answered

Free text box, no character limit:

Component 2.4

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Not Answered

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Yes

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To achieve FSANZ purpose of long-term health outcomes for all people living in Australia and New Zealand, the FSANZ Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the FSANZ Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand that have made international commitments to food security (see: UAE declaration on sustainable agriculture, resilient food systems, and climate action). Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Support for this approach was clearly outlined throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

Other comments

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

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit: