

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 07:57:14

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Belinda Castles

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Consumer NZ

Which sector do you represent?

Consumer Organisation

Other: :

Consumer NZ

What country are you responding from?

New Zealand

Other: :

New Zealand

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.

Free text box, no character limit:

Consumer NZ continues to be concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft 2021 Regulatory Impact Statement, this has not been well documented. Little detail has been provided to explain the processes, inputs and assumptions underpinning problem identification and prioritisation.

We believe the current methodology is flawed as it fails to identify a key policy problem - that the 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. These problems were raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021).

Instead, 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 IA 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 the risk-based framework and the cost benefit analysis. To help address this, we support the proposal put forward by The George Institute for Global Health (and supported by New Zealand and Australia public health organisations) that a Public Health Test be incorporated into the Act.

Policy problem 2 also fails to adequately address the unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA 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. This approach presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged in the IA that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Therefore, we do not agree that Options 1 and 2 should be considered as two independent options. There is considerable overlap between both options and 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 request 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?

Free text box, no character limit:

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”. Therefore, the Act should include responsibility for the food system’s security and vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) 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. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand’s national and international obligations under the Paris Agreement are fulfilled, and safeguarding food safety and security.

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 and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources including internal expertise, FSANZ can be an effective agency to respond to the food system’s regulatory needs.

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

The sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;

Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews;

Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently very well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

These sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not relate to the primary objective of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

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):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly support the proposal of New Zealand and Australian public health organisations for the inclusion of a Public Health Test in the Act to address this

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

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):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

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

Positive

Additional comments (optional):

Legislative clarity about FSANZ's role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

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

Yes

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

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

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:

Consumer NZ is supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

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

Yes

Free text box, no character limit:

Clarification of the definition of public health as proposed in the IA will not itself ensure that the significant gap between the objectives of the Act, and the practical implementation of the Act in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

Consumer supports the Public Health Test as proposed by The George Institute for Global Health (and supported by New Zealand and Australian public health organisations) in their submission.

The PUBLIC HEALTH TEST

Priority setting should consider:

The burden of disease attributable to the food supply

Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;

Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines;

Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease;

Assess the impact on the burden of disease attributable to the food system;

Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;

Assess the cumulative impacts of the introduction of new foods on public health outcomes;

Reduce availability of unhealthy foods targeted at children.

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?

No

Free text box, no character limit:

The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.----

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?

Prefer not to respond / I don't know

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?

No

Free text box, no character limit:

Food standards should only be harmonised with international standards where those standards meet the Public Health Test

Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest independent bodies like the World Health Organization.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

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

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

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

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.2.4

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

No

Free text box, no character limit:

We recommend FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

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?

Prefer not to respond / I don't know

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?

Yes

Free text box, no character limit:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately.

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

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a time-frame of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

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

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

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?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and risk public safety, health and confidence in the food system.

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

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

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. We strongly oppose any decision that may reduce the number of public health and consumer positions on the board. This also helps ensure the management of real and perceived conflicts of interest.

Component 2.3.2

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

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry companies to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

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

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

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:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

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

Prefer not to respond / I don't know

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

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?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1.

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

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

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

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

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

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

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

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

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?

Prefer not to respond / I don't know

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?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

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?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

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

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

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

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

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

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

Consumer NZ supports the recommendation proposed by The George Institute for Global Health.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

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

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

The IA 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.

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.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

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

Yes

Free text box, no character limit:

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ's purpose of long-term health outcomes for Australians and New Zealanders, the 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 Act provides an opportunity 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 which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

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.

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.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that “the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021” and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

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: