

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:  
Anne-Marie Mackintosh

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::  
Australian Food & Grocery Council

Which sector do you represent?

Food Industry

Other: :  
Australian Food & Grocery Council

What country are you responding from?

Australia

Other: :  
Australia

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

Yes

What is your email address?

Email address::  
[REDACTED]

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

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

Free text box, no character limit:

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 assessment? 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?

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 that 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)

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 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

#### 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?

No

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.

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 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.

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

Neutral

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

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:

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

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:

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.

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:

The AFGC has no views to express at this stage.

## Component 2.1

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

No

Free text box, no character limit:

## Component 2.2

### Component 2.2.1

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

Yes

Free text box, no character limit:

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.

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

Free text box, no character limit:

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

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

Positive

Free text box, no character limit:

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

### Component 2.2.2

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

Yes

Free text box, no character limit:

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 that 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.

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

Yes

Free text box, no character limit:

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.

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

Yes

Free text box, no character limit:

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.

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

Yes

Free text box, no character limit:

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.

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

Positive

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.

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

Yes

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 that 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

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

Yes

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 opacity to the decision-making process.

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).

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

Neutral

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.

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

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?

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.

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:

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

#### 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:

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

Yes

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

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

Yes

Free text box, no character limit:

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.

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>

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

Positive

Free text box, no character limit:

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

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

Yes

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 that 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 that governments seek in trying to improve the efficiency of regulatory frameworks, and it helps to make industry sectors more productive.

## Component 2.3

### Component 2.3.1

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

Yes

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.

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

Yes

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

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

Negative

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 that 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

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

Negative

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:

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. 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
3. practicality – identification of the 5,000 businesses to be levied would be difficult as there is no database that identifies food industry businesses and ranks them by turnover. To be clear, the food businesses that 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 (1), 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.

Ref:

(1)

<https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-p>

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). (1)

Ref

<https://www.pc.gov.au/research/completed/industry-levies>

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.

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

Negative

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.

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

No

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

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:

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.

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.

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?

Yes

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.

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?

Positive

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.

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

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

No

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?

Yes

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.

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.

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

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.

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

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

No

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.

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

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:

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.

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

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

Yes

Free text box, no character limit:

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.

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

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

Yes

Free text box, no character limit:

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.

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:

The AFGC has no further comment.

#### 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:

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

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

No

Free text box, no character limit:

The AFGC has no further comment.

#### Section 6 - Net Benefit

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

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

Yes

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:

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

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?

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:

The AFGC has no further comment,

## Section 6 - Net Benefit (Option 2)

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

No

Free text box, no character limit:

The AFGC has no further comment.

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:

The AFGC has no additional data.

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

Yes

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 that 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

### 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 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.

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

No

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)

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

No

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 that 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 that undermines the sole argument supporting the industry levy – namely that it is an alternative to government funding.

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

No

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.

## 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:

The AFGC has no further comment.

## Other comments

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

Yes

Free text box, no character limit:

Please see pdf of further comments.

## 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: