

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 16:31:58

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Dr Rosemary Stanton

Are you answering on behalf of an organisation?

No

What is the name of your organisation?

Organisation name::

Rosemary Stanton Pty Ltd - independent public health nutritionist

Which sector do you represent?

Other (please specify)

Other: :

I write as an individual who has worked in public health nutrition for the last 56 years.

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

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

Free text box, no character limit:

Major problems with the current FSANZ Act involve:

1. The definition of public health
2. The need for food standards to include issues related to the environmental sustainability of our food system.

FSANZ's terms of reference have always referred to 'public health and safety', but the 'public health' aspect has largely been defined and regulated in relation to the immediate adverse health effects from food that may cause immediate or short-term adverse reactions.

FSANZ's role in protection of short-term health is done well, as shown by the low incidence of food recalls and the small number of reports of food poisoning due to foods purchased in Australia and New Zealand.

No health expert doubts that food is vital to both short and long-term health, so it is strange that FSANZ sees its role as primarily related to short-term health. Long-term health problems caused by the average diet in Australia and New Zealand are either largely ignored, or attract only lip service from

FSANZ even though other agencies, such as the Australian Institute of Health and Welfare highlight the fact that few people in Australia or New Zealand choose foods wisely in accordance with the advice given in our Dietary Guidelines. Food composition, ingredients, labelling and health and nutrition claims obviously influence food choices and long-term health. It is important that FSANZ does not ignore such issues, putting emphasis on the commercial interests of the food industry ahead of public health.

Living in an obesogenic environment requires attention from the food regulatory system. This issue is especially important for people in remote areas, those who have not had the advantage of better education, or are in areas of socioeconomic disadvantage. (Lee, A., Patay, D., Herron, LM. et al. Affordability of current, and healthy, more equitable, sustainable diets by area of socioeconomic disadvantage and remoteness in Queensland: insights into food choice. *Int J Equity Health* 20, 153 (2021).

FSANZ also needs to give attention to the adverse environmental effects of the current food supply. Too many finite resources are used to produce literally tens of thousands of foods which can be described as 'discretionary' or 'unhealthy'. Most of these products also fall into the category of 'ultra-processed foods'. They contribute one-third of adults' and 40% of children's energy intake. Any food regulatory system needs to ensure such contributions are curtailed or at the very least, not encouraged by a lax food regulation system.

In summary, the major problems to be resolved are:

- As part of the regulatory system, FSANZ does a good job of looking after the risk of immediate health problems from the food supply but it needs to urgently apply the same rigour to the long-term adverse effects of current dietary patterns.
- The need for all aspects of our food system to incorporate the long-term environmental aspects of the food supply.

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

Free text box, no character limit:

Consideration for who 'sets the menu'

The food regulatory system needs to prioritise proposals that have overall environmental and public health benefits. Public health issues should 'set the menu', and the food industry's role should be to then produce that 'menu'. Too often, the interests of the food industry dominate, as can be seen by the massive proliferation of ultra processed foods, many making irrelevant, albeit currently legal, nutrition content (extending in some cases to 'health') claims. This is in spite of the well-documented problems of UPFs - both for the burden they place on a finite and degraded environment and the extensive studies showing their effect on the health of the population. We could also add packaging and waste to the detrimental effects of UPFs.

Exports of food products

The use of resources for food exports from Australia should have greater consideration in our food regulation system. For example, 60% of beef, 75% of almonds, 35% of dairy products and >80% of sugar produced in Australia are exported. The consequences of 'extracting' so much food from our environment include extensive land clearing and resultant loss of biodiversity, high use of water resources (which are often scarce), fertiliser run-off (causing massive eutrophication), waste disposal and production of greenhouse gases. This is not sustainable over the long-term and the food regulatory system needs to consider such issues.

Some exported foods also create potential health problems for other populations. Examples include infant formula and toddler milk products, sugary foods and drinks, fatty 'off-cuts' of poultry and red meats and some dairy products.

Some consider such products are a matter for the food regulation system in the countries where they are purchased, but as a 'big brother' country, Australia should assume some responsibility for adverse health effects. Some of our Pacific Island neighbours, for example, use their scarce financial resources to purchase products that carry potential health risks. Increasing use of infant formula and toddler products are especially problematic for the health of countries that succumb to the sales tactics of companies producing these products, with consequent decreases in breast feeding. (see the 2023 Lancet Series on Breastfeeding, available at <https://www.thelancet.com/series/Breastfeeding-2023>).

Security of food supplies

The food regulatory system also has an important role to play in safeguarding food safety and security. Disruptors to security will occur with vulnerability to the effects climate change will have on food production. Distribution of food can also be disrupted by other health problems such as occurred with lockdowns during COVID-19.

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 with the greatest impact on the health and well-being of Australians and New Zealanders should receive the highest possible impact ratings. These include:

*Policy Problem 1, sub-problem 1: The unclear definitions about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures create confusion.

*Policy Problem 2, sub-problem 2: Piecemeal changes have taken precedence over the wider need for review.

*Policy Problem 3, sub-problem 2: Insufficient funding has created pressures for FSANZ and has led to FSANZ failing to focus on wider statutory functions.

Other sub-problems with lower risks to long-term health should be rated lower than those dealing with long-term health impacts.

Specific recommendations for each policy

Policy Problem 1. The purpose and objectives of FSANZ are not clearly stated or understood. This policy problem is of major importance and should be rated as high magnitude (3) rather than moderate. The impact and extent of risks posed by piecemeal changes and insufficient funding can have significant impacts on public health outcomes.

Policy Problem 2. Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible. I do not consider this problem is high magnitude because the proposed reforms relate to issues for FSANZ rather than widespread consumer and public health reforms.

Policy Problem 3. Elements of FSANZ's operations are inefficient. This is of moderate to high magnitude (2-3) as the impact on the populations of Australia and New Zealand rates more highly than suggested in the document for sub-problem 2. Less resourcing has impacts on the role FSANZ can play in supporting public health outcomes. This policy problem should also include funding sub-problem 3 under policy problem 2 as this would further increase the magnitude of this 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):

I support amending sections 3 and 18 of the Act to include a definition of public health and safety that will give clarity about FSANZ's role in developing food standards that protect against long-term risks to health. An amendment to section 3 of the Act needs to include a definition of 'protecting public health and safety' that includes both short and long-term health. Section 18 then needs to align with this definition.

(FSANZ's website already includes a paper contributed by its Consumer and Public Health Dialogue on this topic in April 2012. It remains relevant to this current discussion and states: "Public Health is defined as the organised response by society to protect and promote health, and to prevent injury, illness and disability. Public health is distinguished from other roles of the health system by its focus on the health and well-being of populations rather than individuals. Public health programs are usually aimed at addressing the factors including social and environmental considerations that determine health and the causes of illness, rather than their consequences, with the aim of protecting or promoting health, or preventing illness".)

I would also support using the definition in the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures- "all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short-term or long-term, including preventable diet-related, disease, illness, and disability, as well as acute food safety concerns." I also recommend adding 'and the diet-related risk factors for them' following 'disability' in that definition.

FSANZ role in protecting long-term health was set out in a Ministerial Policy Statement that was confirmed by Ministers and the FSANZ Board. The impact of simply enhancing the definition is unlikely to result in significant change, as it fails to define 'how' FSANZ will consider long-term risks to health in its decisions. Public health needs more consideration throughout the Act. This could be addressed by including a Public Health Test in the Act could help address this (further details under final question for component 2.1).

I would like to see all FSANZ's standards describe how they have considered risks to short and long-term health.

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):

As described above, I have already addressed the role of FSANZ in considering long-term health. The Act needs to clarify how FSANZ will do this.

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

Positive

Additional comments (optional):

Stakeholders will only be confident that FSANZ considers long-term risks to health when developing food standards when the definition of the protection of public health and safety is adequately described within the Act. In practice, this could be achieved by incorporating the Public Health Test in the Act.

Component 2.1.2

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

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:

Developing Ministerial Policy Guidelines involves rigorous processes. Section 18(2) of the Act can be amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines with all items that come before FSANZ considered only when compliance with Ministerial Policy Guidelines is assured.

The fact that FSANZ considers and complies with Ministerial Policy Guidelines should be publicly available on FSANZ's website with details about how FSANZ has complied and describing the public health implications of compliance and non-compliance.

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

'I don't know' is my response here, although I do know that change is needed.

I fully support greater recognition of Indigenous culture and food expertise in the Act. This should involve consulting and involving Aboriginal and Torres Strait Islander and Māori people in the development of provisions and language changes in the Act, as they relate to their culture and health.

Cultural determinants of health are important for First Nations and Māori peoples, including prioritising their knowledge and their culture-led approaches to health and well-being. Without more knowledge of the current level of consultation with First Nations and Māori people and experts, plus the lack of detail about examples of new provisions and language changes, makes me uncertain about the impact that component 2.1.3 will have on better recognition of Indigenous culture and expertise.

Specific consultation with First Nations and Māori people and experts should be a priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise. Any changes in the Act should reflect First Nations and Māori ways of being, knowing and doing, and be appropriate to the food regulation as it relates to their culture and health.

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

Yes

Free text box, no character limit:

As mentioned in my previous response, I recommend FSANZ consult specifically with First Nations and Māori people and experts for guidance on possible provisions and language changes that are culturally appropriate and beneficial to recognising and promoting Indigenous culture and knowledge within the food regulatory system.

Component 2.1

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

Yes

Free text box, no character limit:

I support amendments to the Act to ensure it meets its objective to protect long-term public health. Clarifying the definition of public health is an important part of this, but on its own, won't address the gap between the objectives of the Act and the practical application within food standards. A clear definition to ensure long-term public health outcomes is embedded in FSANZ operations is essential.

The Act should be amended to include what FSANZ should take into account when setting priorities and also when making decisions on proposals, applications or any reviews. This will set clear and consistent expectations around how benefits and risks to public health benefits should be assessed in developing, reviewing, updating and adopting food standards.

The George Institute for Global Health has made recommendations to use a Public Health Test and I fully support their points (set out below).

Priority setting should consider:

- a) The burden of disease attributable to the food supply [1];
- b) Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;
- b) 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 [2];
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3];
- d) Assess the impact on the burden of disease attributable to the food system;
- e) Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through a vulnerability assessment that priority populations may have to diet-related disease.

[2] noting that updates are currently considering the sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

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:

A risk-based framework involves opportunities and risks, and the information in the IA is too limited to support the application of a risk-based approach at this stage. Limitations include insufficient details on the framework itself, including how it's to be applied, who is responsible for decisions and what the appeals mechanism would look like (if any).

From the limited information provided, the risk-based framework doesn't seem to produce an equivalent approach for decisions that would impact public health compared to those that impact industry. It appears from the IA (including details in Appendix D) that some industry/commercially driven decisions would be assessed as 'low risk' whereas all public health decisions would be assessed as 'high risk'. This could worsen the existing disparity between the approach to public health and industry decisions under the Act. In turn this could affect the time it takes for decisions to be made and the outcomes.

More consultation on the risk-based framework is needed. This should commence immediately and be developed alongside the Act review. Consultation should also focus on the risk criteria and assessment matrix, and also give details on organisations whose assessments would be used as a basis for any minimal assessment approach, decision-making responsibilities and likely public health outcomes.

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

Free text box, no character limit:

The proposed 'Public Health Test' (details given under component 2.1) should be considered as part of the basis of the risk framework.

The Public Health Test could provide criteria, with the risk framework setting out how the likelihood and consequences will be assessed. The framework should also provide details on the decision-making process and where the risk assessment will fit within that, as well as a delegation for decisions about risk assessment, communication and mechanism for appeals.

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:

With the limited information presented, I cannot assess the impact of introducing a risk-based framework.

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:

A risk-based and proportionate handling of applications and proposals needs to consider public health. As mentioned in my previous response, the limited details of the risk framework suggests many public health outcomes would be classified as high risk and could easily fall out of the consideration of this option. Changes would then benefit industry rather than public health.

From the details in the IA, I am not assured that public health considerations and impact will be adequately addressed by accepting international risk assessments. If determinations made by overseas bodies were adopted, we would need an assurance that these bodies have strong methods for managing conflicts of interest. The World Health Organization does manage COIs but many other associations and bodies do not.

To assess risks, we would need a definite protocol before accepting risk assessments from any international jurisdiction. Any such system must be transparent, credible and risk-based to involve public health. If FSANZ were to use decisions made by international jurisdictions, the scientific and policy basis for FSANZ decisions must be publicly available on their website.

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?

No

Free text box, no character limit:

Harmonisation should only occur if food standards meet the Public Health Test (previously described 2.1) and provide ideal outcomes for public health rather than some standard that enables expanded marketing of nutrient-poor foods.

The limited detail in the IA fails to assess how this would work in practice. Further consultation would be needed on how this would be applied, including full consideration of public health outcomes.

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:

How this would apply in practice, including what would be included in the minimal assessment of the minimal check pathway is missing. This proposal appears to prioritise commercial decisions as opposed to benefiting public health. Any risk assessment and evidence would need to be open to public scrutiny and could pose a risk of upholding the primary objective of the Act which is 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?

No

Free text box, no character limit:

The IA notes that further work on any new pathways would be needed. Creating any new pathways that remove public consultation are risky. Again, the Public Health Test would be essential to ensure public health outcomes are adequately considered.

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

Negative

Free text box, no character limit:

The new pathway options give limited information and this doesn't seem to ensure broad public health benefits.

The assumptions made in Appendix D suggest public health decisions would be classified as 'high risk' and could therefore easily fall out of contention with potential new pathways to amend food standards. Again, this risks prioritising commercial decisions at the expense of public health. No mechanisms in the proposed reforms seem to ensure that any efficiencies would result in more resources being directed towards processing public health proposals. Much more detail plus consultation would be needed to better assess the risk and benefits of this approach.

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:

Insufficient information is provided for me to respond.

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:

Without detailed information on the risk framework in the IA, I can't support this option at present.

The most pressing change is not to increase flexibility but to ensure FSANZ puts public health into its proper perspective. More widespread emphasis on FSANZ's remit to consider both short and long-term public health has the potential to increase its efficiency.

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

Free text box, no character limit:

Delegating some decisions may improve efficiency if an appropriate risk framework was in place. Details are currently too limited to assess the appropriate use of a risk framework, but as already mentioned in my responses, any risk framework must adequately assess public health impacts. Further consultation on the risk framework should include specific questions about risk allocation for the purpose of decision-making. A new risk framework and decision-making process should also be reviewed regularly.

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:

Without detailed information on the risk framework it is difficult to know how streamlining decision-making arrangements may impact public health. If the development and application of a risk-based framework is done well and considers public health appropriately, delegating low-risk decisions could assist in streamlining decision-making arrangements and improve efficiencies.

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

Free text box, no character limit:

That person should be free of conflicts of interest and have a good understanding of public health issues.

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:

I recommend FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system, including for traditional foods and ingredients.

It will be important to be mindful of the potential risk of commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Not Answered

Free text box, no character limit:

FSANZ should consult with First Nations and Māori people and experts for guidance on whether further materials are necessary and if so, how they may be better supported to engage more broadly with the food regulatory system. It will be essential for First Nations and Māori people and experts to outline the traditional food assessment process in ways that assure it is culturally appropriate and respectful of their food practices and knowledge. Guidance material developed with appropriate consultation, co-design and co-construction has the potential to support the safe entry of traditional foods to market.

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:

Providing adequate resourcing is essential to enable FSANZ to undertake more timely, holistic and regular review of standards to be more strategic and consistent in changes to food standards. Focusing on the impact on public health (using the Public Health Test) would help determine the reviews done and their prioritisation.

Additional resourcing does not need adopting Option 2 as it could also be available under the existing Act and operations framework (Option 1). All components that propose additional funding that doesn't require significant legislative change should be assessed separately as described in the response to the question on methodology.

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

Not Answered

Free text box, no character limit:

The Act should be amended to include statutory timeframes for standard reviews and establish clear criteria for how and when such reviews are done. These reviews should support FSANZ's primary objectives as outlined in section 3 of the Act.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but sets no mechanism to ensure the proposed reforms and no framework to govern how this would work in practice. Further details are also needed on whether FSANZ has the time and resources to accomplish the task.

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 already has the capacity to develop guidelines and Codes of Practice. These should not be used instead of regulation, as both guidelines and codes of practice are non-binding. Consumer safety and public health need a food regulatory system to be based on regulation. Codes of Practice and guidelines should be used only to address how regulations are interpreted and applied.

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:

No. Nothing in my 56 years of experience in public health nutrition springs to mind!

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:

Sorry, can't see a way as I don't think a Code of Practice is sufficient.

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:

I do not support the development of Codes of Practice and guidelines by industry for industry. Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective and unenforced. Some of the many references include Lacy-Nichols J, Scrinis G, Carey R. The politics of voluntary self-regulation: insights from the development and promotion of the Australian Beverages Council's Commitment. Public Health Nutr.2019;1-12.

Knai C, Petticrew M, Douglas N, et al. The public health responsibility deal: Using a systems-level analysis to understand the lack of impact on alcohol, food, physical activity, and workplace health sub-systems. International Journal of Environmental Research and Public Health. 2018;15(12):2895

Boyland EJ and Harris JL. Regulation of food marketing to children: are statutory or industry self-governed systems effective? Public Health Nutrition, 2017; 20(5):761-4.

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

Component 2.2

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

Yes

Free text box, no character limit:

The summary of Option 2 in Section 6 of the IA states that FSANZ will continue to “deliver three proposals per year”. The reform options also fail to ensure proposals are processed in a more timely manner.

One initiative would be for any proposal to include a statutory time-frame. Such a proposal might be broader, more complex and need more nuanced consultation than an application, but this shouldn't cause delays extending over many years. A time-frame that allows sufficient time for FSANZ to identify, and if needed, get evidence to support the decision should be used to support timely and efficient progress of proposals.

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

The composition of the FSANZ Board could be more flexible and fit contemporary governance processes. The current requirement for expertise in Board members should stay but additional skills would support good governance and oversight.

Specific positions for Board members with expertise in First Nations and Māori food and culture would be a valuable addition. This will assist the Board in achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. Positions in public health are vital, and as many Board members as possible should be free of conflicts of interest.

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:

Changing the current nomination process to an open market one would be inappropriate, especially for public health positions. The number of public health and consumer representatives on the Board could be expanded. Any removal of the statutory requirements for the Health Minister to seek nominations from prescribed organisations could pose a risk to the public health and consumer positions. An open market process introduces potential risks with increased dominance from those with commercial conflicts of interest. Some positions that entail a conflict of interest may be inevitable, but must be well managed, whether the conflict is real or perceived.

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:

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:

FSANZ faces great challenges in adequately funding its work. With such an important role, FSANZ needs ongoing financial viability to carry out its functions and meet the objectives of the Act. An amendment to the Act to introduce an appropriate industry-wide levy would provide a reliable and ongoing source of known funding for FSANZ.

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:

Eligibility and rate of the levy could be based on factors that include the turnover of the company marketing foods in Australia and New Zealand. An extra fee could be applied to those marketing foods that are unhealthy (at present that would be all foods fitting the description of 'discretionary').

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:

Not my area of expertise

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

Negative

Free text box, no character limit:

A compulsory fee based on applications could be less financially sound than an industry-wide levy for resourcing FSANZ. It is also fair that fees are distributed across all food companies since all need the expertise of FSANZ in some way.

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:

I do not support cost recovery from industry-initiated entrepreneurial activities. Best Practice Element 3 of the IA highlights that cost-recovered services frequently represent a minority funding stream for standard-setters. This is appropriate to ensure FSANZ maintains its independence. I also do not see it is FSANZ's role to assist with entrepreneurial activities

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:

I do now know enough about this to respond.

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:

Not my area of expertise

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:

Not my area of expertise

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

Neutral

Free text box, no character limit:

It depends. The recall could depend on why it was needed. In some cases, the problem may have been something the company should have realised or acted upon. In other cases, the fault may have been outside the company's responsibility. In the latter case, the levy may not go directly to the manufacturer.

How would this need to be implemented to be successful?

Free text box, no character limit:

Not my area of expertise

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

Other

Free text box, no character limit:

Not my area of expertise

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

Negative

Free text box, no character limit:

Probably negative. An additional fee could push jurisdictions to abandon some work.

How would this need to be implemented to be successful?

Free text box, no character limit:

Not my area of expertise

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:

My 'prefer not to respond/don't know' response was because I don't think this is a necessary question. I support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system, but this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is all 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:

Public health is the priority objective of the Act. I therefore recommend that the Public Health Test (see my previous response to component 2.1) be used to guide the prioritisation of all FSANZ's work.

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

Free text box, no character limit:

As mentioned above, priority setting between FSANZ and FMM is already a standing agenda item. If FSANZ is doing regular standard reviews as core work, progressing proposals efficiently, and is resourced to perform these essential tasks, more coordination should not be needed.

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 and 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 should receive adequate resourcing to ensure it undertakes its core functions, including regular standard reviews and efficient processing of proposals. Adequate resourcing would also ensure FSANZ can collaborate effectively with the FRSC and the FMM to ensure the Food Standards Code is up-to-date and reflects changes in the market.

Component 2.4.3

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

Yes

Free text box, no character limit:

It's important that Australia has a comprehensive and regular food and nutrition monitoring and surveillance system in place. FSANZ playing a role as a database custodian could improve intelligence sharing across the regulatory system.

To ensure effectiveness, linking data and sharing with other key groups such as the Australian Bureau of Statistics and Australian Institute of Health and Welfare should be established, with the database being publicly available.

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

Free text box, no character limit:

Food labelling information including nutrition information, ingredients lists, nutrition and health claims, Health Star Rating would be useful.

Collection of data is vital to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help identify priorities, develop policy options and evaluate implementation. Consumption data is critical in assessing proposals and applications, and ensuring such processes address public health and drive better health outcomes for Australians and New Zealanders.

I recommend developing a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand.

Data that should be collected and curated includes data on:

- Food supply, including composition;
- Sales data;
- Dietary intake (consumption data);
- Nutrition-related health outcomes, as they relate to overall burden of disease.

Although FSANZ will play a key role in curating data, the collection and use of this data goes beyond the responsibility of only FSANZ. A comprehensive nutrition monitoring and surveillance system could be housed with FSANZ or other entities, such as the proposed Centre for Diseases Control. Additional resourcing for FSANZ is also important for their role as a database custodian.

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:

I support establishing sharing arrangements to support FSANZ operations.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Sharing information could be used to form part of the initial background research required during the development of standards. However, such information and its application will need to be relevant in the Australia and New Zealand context.

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:

Statements of intent alongside the Food Standards Code can be helpful for stakeholders to better understand the aim of the standards. Standards should be written in plain English to reduce potential for misinterpretation.

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:

It is important that guidance is written in plain English and emphasises that the food regulatory system include effects on both short and long-term health

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:

I have a mixed response here. I do not think it is FSANZ's job to develop industry standards. However, it is FSANZ's job to ensure all food companies understand the importance of them sticking to the Code.

It is important that guidance is written in plain English and explains that the food regulatory system include effects on both short and long-term health.

There may be some benefit in FSANZ being able to provide additional interpretive guidance to smaller or new companies.

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 Act should definitely be amended to ensure FSANZ consults First Nations and Māori peoples appropriately and recognises their expertise This will involve a broader consideration of the impact of the food regulatory system and food regulatory measures on First Nations and Māori peoples.

Consultation is important to ensure the food regulatory system includes the diverse needs of the community, relating to nutrition, culture, food security and public health.

This will involve a thorough consultation with First Nations and Māori groups to understand their specific requirements. FSANZ should also consider co-developing culturally-tailored compliance guidelines. I understand this will involve a significant investment in time and resources, but that is important to develop relationships with 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:

I support greater collaboration between FSANZ and jurisdictional enforcement agencies to ensure consistent interpretation of standards and greater enforcement of them. This is important so that the standards 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?

Yes

Free text box, no character limit:

It would be wise for FSANZ to consult organisations with expertise in economic evaluations.

Two options – Option 1 to retain the status quo with no changes to the Act or FSANZ's operations and Option 2 which involves a whole package of reforms. However, many of the policy problems presented could be addressed without changing the Act or operational framework, and would therefore apply to both options. This polarised way of presenting two 'options' doesn't give proper attention to the changes that really do need reform. Some of the reforms need significant legislative and operational changes. Others need changes to FSANZ's resourcing, strategic direction and prioritisation.

Increasing Government funding in Option 2, without changes to the act or operational framework, could equally apply to Option 1. The cost benefit analysis presents the benefit of Option 2 as depicting a scenario where all reforms are adopted in full, but this is unlikely to occur in practice.

The cost benefit analysis should reflect public health costs and benefits. More detail is needed on the methods and assumptions relating to the costs and benefits for the public and for government. This should include:

- A separate breakdown of the specific costs and benefits for all impacted stakeholders for each type of FSANZ work (in practice, this means not classifying proposals, reviews and applications as all having the same public health benefit for the public).
- Details on the specific public health benefits – both short and long-term and the benefits for both government and the public.
- Separate definitions for short and long-term health benefits should be clearly set out.
- All details about the benefits for health, the healthcare system and associated social and economic impacts for the government and the public need to be noted for each part of the cost-benefit analysis.

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

Free text box, no character limit:

Consultation with peak bodies for First Nations and Māori peoples to provide advice on their growth expectations will be needed.

What are the current delay costs to industry?

Free text box, no character limit:

Any costs to industry due to delays are obviously a problem for companies. However, if delays are the consequence of a thorough analysis of health costs to the public or to government, that is a problem which a company (or indeed the entire food industry) should bear. Consumer safety and public health should always be prioritised over commercial interests.

All costs used in any analysis should be established independently. This fits with the requirement of the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent with any gaps or limitations in the data discussed and assumptions disclosed.

Note too that when industry claims costs, it is important to establish who has provided these costs - are they independently costed?

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:

This is not my area of expertise. However, data and expertise are available across Australia and New Zealand to support a Cost Benefit Analysis that can appropriately reflect the costs and benefits to public health, particularly amongst public health and consumer groups. FSANZ should consult these experts.

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Yes

Free text box, no character limit:

As previously mentioned, I recommend the cost benefit analysis should reflect public health costs and benefits more specifically. This entails giving greater detail on the methods and assumptions in relation to the costs and benefits to the public and to government.

It would also be useful to clarify how the 'risk-based' approach improves public health outcomes. Is it based on having more time for proposals, noting that the model keeps the number of proposals consistent? And has the cost of FSANZ being less rigorous in some areas following a risk-based approach been quantified, especially for public health outcomes?

The Cost Benefit Analysis should also explain how a 'risk-based' approach improves public health. Is this less rigorous approach related to giving FSANZ extra time to make proposals? How is the cost of FSANZ being less rigorous in the Cost Benefit Analysis quantified?

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:

As mentioned previously, data and expertise are available in both Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health, particularly amongst public health and consumer groups. FSANZ should make a significant effort to identifying and engaging with these experts and organisations.

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

Yes

Free text box, no character limit:

As noted previously, the conclusion of the net benefits section should be reviewed by organisations with greater expertise in economic evaluations. At present, the summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits. However more detail is needed to support this, with more detail to determine whether the public health benefits proposed will actually occur.

The current cost benefit analysis does not consider the burden of disease throughout its entirety. Modelling should include the costs of diet-related diseases that may result from the reform options. This includes quantifying the public health impact of the increasing number of products being produced that increase the risk of diet-related diseases in both reform Options. The poor health attributable to delays in food regulatory measures that could protect public health should also be considered in both models.

The assumptions made for the costs of proposals are based on FSANZ be able to process more proposals in a timely manner. However there is no mechanism to ensure this, and the modelling is based on the same number of proposals being completed (n=3). Delays in proposals have not been modelled in Option 2, but should be included, along with proposed mechanisms to reduce delays.

The current modelling assumes all applications have a benefit for consumers. However, it is more likely they will usually benefit industry rather than have any positive public health outcomes. The analysis needs to expose this problem.

The cost to industry of confirming FSANZ's role in considering long-term health should definitely be removed as a cost. This is an integral role for FSANZ and the analysis should not consider it a cost to industry.

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:

Some of the reforms suggested under Option 2 could be available to FSANZ under Option 1 (status quo) without changing the Act or operational framework. This should be considered when comparing the two Options. The current methodology weights the results heavily towards Option 2. The limitations in the policy problems themselves (see responses in section 3) also limit this assessment. Setting out these two Options as distinct options ignores some of the important changes that are really needed.

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

No

Free text box, no character limit:

The negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) in Part 3. I would give a negative impact rating of 3 (high) for policy problem 1.

Option 2 is given a rating of 3 - majority resolution - for solving Policy Problem 1. I would give this a rating of 0 (not-at-all) or 1(low).

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. I would rate it as 1 (low).

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. My rating would be 1.5-2 (moderate).

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 4 and Option 1 is given a 0 - no resolution. I do not understand why the rating differs for these options as the proposals under all three sub-problems for Options 1 are operational. FSANZ can already do these under current system. Also both Options 1 and 2 could solve this sub-problem equally, so should have the same rating.

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:

Do FSANZ's resources and organisational capacity extend to managing this workload and addressing and managing the risks related to long-term health impacts in a timely matter? This risk is present for both Option 1 and 2. The risks of having no statutory requirements for proposals and reviews is also a major problem. The problems can be separated as listed below:

An accurate assessment of risks from various components is not solved by bundling components for reform into themes. Each component needs to be assessed separately so that the risks of each are clear.

Risks to long-term health and the confusion around public health objectives are separate risks and should not be bundled together.

The risk-framework and new pathways each have potential to impact short-term health outcomes (food safety) and also long-term health outcomes (diet-related health problems). These risks need to be assessed separately.

With no legislated time-frame for proposals, there is no guarantee that FSANZ resources will be used appropriately. This is a risk in itself and can also change related risks.

With no requirement to dedicate resources to standard reviews, as would occur with legislated time-frames, there is no guarantee FSANZ resources will be used to progress these. This is a also risk in itself and also needs consideration in assessing related risks.

Both Options 1 and 2 need to identify that FSANZ's organisational capacity to manage its current workload, and also address and manage risks relating to long-term health impacts, will not be sufficient to reallocate resources and provide new sources of funding.

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

No

Free text box, no character limit:

The risks of unsafe food or unhealthy foods (relevant for long-term health risks) entering the market are major. Each of these is given a consequence rating of 1 (major) and as no other risks offer the same scale of damage, these risks should be the only ones given a rating of 1 (major).

The risks and impacts of a company not entering the market or introducing new products are low and should not be overstated. Many products enter the food market every year. Few need to apply to FSANZ for approval.

As stated several times, risks already noted under Option 1 can be addressed under the status quo and won't necessarily be resolved under Option 2. Assessing risks can be treated under each option.

The following comments illustrate how the risk assessment should be reviewed:

- Identified risk: 'Confusion around the objectives and scope of FSANZ will continue, resulting in risks relating to public health and safety- particularly long-term health- not being managed well'.

Although Option 2 proposes to clarify the role of long-term public health within the definition, FSANZ already has that responsibility. Without additional support in Option 2 to implement this role, any significant changes will be unlikely. Some of the proposed reforms will also remove oversight, which could heighten public health risks.

- Identified risk: 'Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks'.

As noted above and throughout this response, this is already the role of FSANZ and with this legislated role in mitigating public health risks, this should not be considered a risk.

- Identified risk: 'Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market'.

The likelihood that this might occur is higher with the proposed reforms and the implications of less oversight and less regulation.

- Identified risk: 'Establishing new pathways to amend foods standards could reduce the level of oversight and scrutiny of products in the pre-market phase, introducing higher risk to population health and safety'.

I would assess the likelihood could be higher with the proposed reforms and their implications of less oversight and less regulation.

- Identified risk: 'Less direct oversight of food standards by the FMM and FSANZ Board would reduce scrutiny and diminish oversight and accountability over the standard setting system.'

Again, I'd suggest the consequences of this would be higher than moderate-minimum, and this also has the potential to undermine confidence in the food regulatory system.

- Identified risk: 'FSANZ will continue to focus on only a subset of its statutory duties, effectively creating gaps in the regulatory system where risks and opportunities are not managed as well as they could be.'

Constraints on resourcing could mean that a subset of functions will continue to be prioritised. However, without statutory timelines for proposals and reviews, this risk is unlikely to be adequately addressed under Option 2.

Section 9 - Evaluation of the preferred option

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

Yes

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

FSANZ should be adequately resourced to deliver on its existing responsibilities, in addition to any new functions proposed. (As someone working in public health and one of the original, and current members of FSANZ's Consumer and Public Health Dialogue since it was set up in 2010, I am aware that FSANZ no longer has resources even to allow this group to meet in person.)

The IA states that FSANZ's operating budget has declined in real terms, with over 90% of their budget coming from government funding. Governments should be providing adequate funding for FSANZ to perform its functions. FSANZ needs a commitment from governments for adequate funds to undertake its functions. This could be done under the status quo. Although this may be out of scope for the FSANZ Act Review, FSANZ's funding arrangements should be considered as part of the broader work of the joint food standards system.

Inclusion of sustainability in the act

I am aware that although a previous RIS explored the option to extend FSANZ's objective to promote food sustainability, this has been excluded from the current analysis. That is a short-sighted approach to what should be a vital function for all health authorities, and also for FSANZ.

The Act that looks at long-term health outcomes for Australians and New Zealanders should ensure that our food regulatory system considers and safeguards health, sustainability and food security. 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 policies needed in Australia and New Zealand.

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give FSANZ responsibility to promote food security. In its deliberations about food regulatory measures, this would enable FSANZ to consider issues that promote or threaten sustainability, particularly as they relate to long-term health and food security.

Many of us involved in public health recommended including sustainability in earlier stages of the Review. The Commonwealth Government of Australia now provides a clear commitment to address food security in the face of climate change. This was reinforced with the National Health and Climate Strategy's clear commitment to actions that address food security. Many of this Strategy's actions need the support of the food regulatory system. The current revision of the Australian Dietary Guidelines is also focusing on sustainability.

The lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health, and nutrition science in pursuing an evidence base to underpin food system policy in Australia and New Zealand must be addressed. Different government departments and agencies may see their role in slightly different ways, but it is essential they start working together to implement the changes needed to ensure we have a sustainable food system to support the health of Australia and New Zealand.

The Act must ensure public health is addressed in both the short and long-term effects on health outcomes associated with our food systems. There is plenty of evidence that dietary risk factors contribute significantly to the burden of disease in both countries. The food regulatory system must play a role in reducing their impact. The FSANZ Act needs to meet its objectives in protecting public health by improving nutrition related health outcomes.

FSANZ plays a critical role in improving and shaping the food supply. FSANZ also has a major role with impact assessments that explore public health effects, plus control over the ingredients, labelling and promotion of food products.

This Impact Analysis has the opportunity to have a major effect on the Regulatory Impact Statement. FSANZ has a major role in public health and a sustainable food supply. Its role should not be watered down by including trade as a core goal. The revision of the Act should favour public health over commercial benefit.

I am concerned that the reforms proposed in Option 2 of the IA have the potential to compromise FSANZ's ability and capacity to meet its legislated,

priority objectives – which is to protect public health and safety, and support consumers to make informed choices.

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: