

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-03-01 14:57:24

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Linda Tapsell

Are you answering on behalf of an organisation?

No

What is the name of your organisation?

Organisation name::
University of Wollongong, Australia

Which sector do you represent?

Research/Academic

Other: :
University of Wollongong, Australia

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:

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

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

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

Yes

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

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

It would mean 'public health and safety' are addressed through an explicit understanding of how food consumption affects health in the short term ('acute food poisoning') as well as the long term ('increasing risk of chronic disease', based on long term imbalance in nutrient delivery to the population resulting in nutritional inadequacy and/or chronic disease risk due to nutritional burden)

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?

Yes

Additional comments (optional):

In practice it would require a twofold approach to evaluation of all applications and proposals, addressing both short- and long-term risks as described above.

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

Positive

Additional comments (optional):

It may also require activities to be better aligned, for example the science behind the reviews of current health claims would also be considered in other areas of approvals.

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:

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:

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

Not Answered

Free text box, no character limit:

Component 2.1

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

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

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

Yes

Free text box, no character limit:

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

Free text box, no character limit:

It would be well to consider evidence inherent to other areas of food and nutrition policy and frameworks, such as the Australian Dietary Guidelines and Nutrient Reference Values.

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:

If managed well, potentially greater alignment with Dietary Guidelines, a leaning toward the development of healthier food products and faster approval processes.

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 food related scientific review processes are set at international levels, and Australian science contributes to this. US and European bodies are well resourced to develop high quality reference materials and these jurisdictions have similar population and health profiles. Australia would need to articulate the processes of adoption and adaption.

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:

Much of the 'leg work' of scientific review would already be done, with transparent methodologies. A checklist for reviewing these would need to be developed, but faster approval processes could be envisaged.

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:

Having a priority program for products would also be necessary, where risk is also aligned with public health intentions as well as food safety, or product simplicity. This is similar to the current health claims position.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

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

Yes

Free text box, no character limit:

It would seem so from the information provided

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

Free text box, no character limit:

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

Neutral

Free text box, no character limit:

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

Free text box, no character limit:

A strong scientific knowledge base in the area under consideration

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?

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Component 2.2.5

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Regular connections across agencies and departments through the enactment of a national food and health policy

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2

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

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

Possibly, to move and grow/keep up, however, scientific expertise in food science and nutrition must be retained to ensure the processes of FSANZ core business are based on a sound scientific basis

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.3

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

Neutral

Free text box, no character limit:

It seems like a reasonable idea to help fund mutually beneficial activity but be more equitable

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:

Proportionate to ability to pay, but also in consideration of the food priorities for the nation

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Yes

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Yes

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Yes

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.4

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

Yes

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Yes

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Component 2.4.7

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

Yes

Free text box, no character limit:

Component 2.4

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Yes

Free text box, no character limit:

The impact of FSANZ on the food system needs to be considered in terms of the types and number of approvals and proposals generated by the system and how this aligns with positions on food in a national food and nutrition policy.

Other comments

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

Yes

Free text box, no character limit:

This is a great opportunity to move forward but carries risks as well as opportunities. Decisions need to be made with care.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-03-10 09:34:59

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Howard Dengate

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Food Intolerance Network

Which sector do you represent?

Consumer Organisation

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::

[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:

Yes, excellent thinking is evident in attempts at quantifying this formidably complex area and the result is comprehensive. Congratulations on trying to tie it down.

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

Free text box, no character limit:

See comments throughout the following responses, but the fact that the extensive rating system was only able to discriminate Policy Problems into two levels (2 and 3) gave some pause.

Section 3 - The problems to solve (Ratings)

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

Yes

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

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

The Food Intolerance Network supports an explicit definition of safety for consumers that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour. The current practice does not cover several of these areas although consumer expectation is that it does.

The Ministerial Policy Statement is comprehensive: "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."

The world's largest scientific review, involving nearly 10 million people, recently found that UPFs (ultra-processed foods) are associated with higher risks of multiple health problems and the Global Burden of Disease Risk Factor Estimate from 1990 to 2016 revealed that diet was the leading cause of death in the USA.

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?

Yes

Additional comments (optional):

If actually applied, then FSANZ will need to change to a different mindset and access a wider range of expertise than that currently utilised. Then it will change FSANZ's conceptual approach in all aspects positively.

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

Positive

Additional comments (optional):

If the new definition is actually applied and resourced, it will require skills and expertise not currently within FSANZ, broader access to scientific research, and ability to consult more widely. This will cost more but is strongly supported by consumers.

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:

One would hope that changes to the way FSANZ communicates would occur as a consequence of changes under Components 2.4.1 and 2.4.2, and help everyone understand how certain regulatory actions have been formulated.

But communicated to whom? Consumers see such communication as of little significance outside the regulatory environment. For instance, if Ministers direct creation of say a traffic light system, the fact that it has been suggested by Ministers is mainly of interest to FSANZ and other bureaucrats even though it does impact on us all eventually. That said, there is virtue in giving clear reasons for each regulatory decision.

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:

While this is important, the highest priority is food safety.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

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

Prefer not to respond / I don't know

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:

The indicative risk management framework raises some concerns for consumers. In particular, there needs to be explicit consumer input into Extent of risk, Scope of impact and Existing evidence given that past FSANZ decisions have ignored widespread consumer concerns. The peculiarly narrow definition of food safety at present has allowed much information under all three Criteria to be dismissed. The Food Intolerance Network members intend that the change in definition will produce change in the risk management framework as a matter of course.

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

Free text box, no character limit:

The criteria proposed are comprehensive enough if the new definition of food safety (under 2.1.1) is implemented and resourced.

As for evidence, previously there has been a lot of picking and choosing with a bias toward the food industry rather than consumers, partly guided by the present very narrow definition of food safety.

Take for example the fact that all foods containing most artificial colours must have a warning in the EU ("may have an adverse effect on activity and attention in children") but the same scientific evidence that convinced EU (and Californian) regulators to act was dismissed in Australia/NZ. Examples could be multiplied.

The Criterion on Extent of Impact would also need to at least consider consumer expectations, which run well beyond the current functions of FSANZ. One could ask "Will it pass the pub test?" – in other words, do consumers see the new proposal of greater risk than do regulators and why?

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:

Using a risk-based framework, together with other changes like taking control of priorities for standard development (2.3.2 and 2.3.3) and addressing very inadequate FSANZ resourcing (2.2.5), would allow more rational decision-making. Nevertheless, some process is needed to ensure there is public and consumer oversight of the Automatic adoption and Minimal checks pathways suggested in Figure 9.

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:

There are some classes of assessments where consumers are not interested and there is clearly low risk. By having a system that expedites these, resources could be freed up to undertake more strategic assessments and reviews, to the benefit of consumers.

But there are others where consumers do need to be consulted because they are not confident that processes would recognise impacts on consumers. A pressing example is that of two coming Processing Aids. One is an enzyme which increases the level of flavour enhancer E631 Disodium-5'-inosinate in foods, and a second is an enzyme which converts the amino acid L-glutamine to flavour enhancer E621 monosodium L-glutamate inside the food "in the manufacture of glutamic acid-rich yeast extracts..." Neither of these will appear on any label yet there are many consumers who would react to increased levels of the chemicals produced. Therefore there must be some public and consumer review mechanism.

There would also be picking and choosing in deciding which international jurisdiction's assessments to accept. In the past, decisions about whom to "harmonise" with have generally favoured industry over consumers. Again, consumers need to be in the loop formally.

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:

Consumer concerns turn on the word "appropriate", so beloved by bureaucrats and Ministers. Who decides? If the EU does not approve a standard but USDA does, the food industry and probably FSANZ will choose the USDA version. This suggestion has the possibility of improving efficiency and freeing resources for better application, but the devil will be in how it is implemented. With "appropriate" consumer checks and balances, this could be supported.

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:

This suggestion has the possibility of improving efficiency and freeing resources for better application, but the devil will be in how it is implemented. With "appropriate" consumer checks and balances, this could be supported.

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:

This suggestion could certainly help, subject to the provisos mentioned in earlier answers, principally that there must be some public and consumer review mechanism of such legislative changes.

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

Neutral

Free text box, no character limit:

Consumer trust has eroded to the point that the Food Intolerance Network would, at a minimum, require some forms of public and consumer oversight of the decisions about what is "appropriate" and "proportionate" in this context. Subject to such checks, this proposal could be supported.

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

Yes

Free text box, no character limit:

A critical emerging issue in this area brings into question whether regulation through food standards will actually work in the future and what alternate pathways need to be developed.

The issue is this: due to consumer concerns about the health risks of Ultra-Processed Foods (UPFs) including food additives, the Clean-Label movement aims to hide ADDITIVES from consumers by removing chemical sounding names and numbers and replacing them with health claims and innocent-sounding INGREDIENTS.

This means that consumers can no longer rely on regulators to tell them what is in their food. This undermines the whole concept of regulating certain additives on safety grounds, and means that previously regulated additives are being used in unregulated amounts.

This Clean-Label approach by the food industry is gaining momentum to the extent that, for some previously regulated additives, there are now far more ways in which they are added as unregulated ingredients than as regulated additives. Further detail can be provided on this claim if required. Having food standards per se does not address this issue where both the presence and amount of an increasing number of food additives evade regulation.

Another pathway that could be considered under this heading is ensuring that all food standards have sunset provisions to ensure regular re-examination of new scientific evidence. For example, the US Food and Drug Administration, Codex Alimentarius Commission and European Medicines Agency all conduct ongoing evaluations and revisions of existing standards to improve safety, efficacy and impact.

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:

The need for Ministers to sign off on ALL changes is clearly an ancient practice that needs to be addressed by some hierarchy of importance in decisions, while retaining the right for Ministers to call in particular changes for wider scrutiny. This change is supported.

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

Free text box, no character limit:

As raised in 2.1.1, changes like this will, under a new definition of food safety, require skills and expertise not currently within FSANZ, require broader access to scientific research, and require an ability to consult more widely. How consumer views will be heard needs to be explicitly stated.

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

Neutral

Free text box, no character limit:

If this change frees up limited FSANZ resources to undertake more strategic reviews and updating of standards to the latest scientific evidence, then it is supported by consumers. Somehow consumers need to become confident that such processes would recognise impacts on consumers, perhaps by an annual report on the use of such a streamlining pathway checked by the Board and available publicly.

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

Free text box, no character limit:

Delegation will require skills and expertise not currently obvious within FSANZ, broader access to scientific research, and ability to consult widely and openly. The system that appears to work in therapeutic drugs regulation, and in agricultural and veterinary chemicals regulation, relies heavily on long-term employment of experienced scientists, not career generalists moving from department to department for experience and promotion.

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?

Yes

Free text box, no character limit:

Should do.

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?

Yes

Free text box, no character limit:

Sounds like a worthwhile endeavour if properly resourced.

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:

See under 2.2.2 the issue of whether the approach of using food standards per se will actually work into the future, given Clean-Label practices by the food industry to evade regulation and so avoid telling consumers about both the presence and amount of an increasing number of food additives.

Nevertheless, increasing resources for FSANZ is strongly supported by consumers so that FSANZ can carry out regular re-examination of new scientific evidence supporting in food standards. As raised in 2.2.2, sunset provisions for food standards would improve safety, efficacy and impact as is the case in USA and EU and for Codex.

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

Yes

Free text box, no character limit:

Again, thinking needs to be wider than prescriptive food standards, given changes occurring in the food industry worldwide, because standards are too blunt an instrument unsuited to regulating hidden additives. Initiatives to bring unregulated additives into regulation will be needed, such as by requiring free glutamate contents to appear on labels, or insisting that functional ingredients carry the number of the previously regulated food additive to which they are chemically identical. To do otherwise is indefensible in the scientific sense and denies consumers what they expect from food regulation.

This Clean-Label approach is spreading quickly through the food industry but is a form of food fraud since it is done simply to mislead consumers.

See further comment under 2.4.6 as Guidelines might be a more flexible approach to this particular problem.

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:

This approach is supported but one hopes that there would be better resourcing of enforcement by States when required. Poor enforcement is a major concern for frustrated consumers.

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:

As submitted in 2.2.5, a Code of Practice could be used very successfully to bring unregulated additives into regulation as needed, such as by requiring free glutamate contents to appear on labels, or insisting that functional ingredients carry the number of the previously regulated food additive to which they are chemically identical. To do otherwise is indefensible in the scientific sense and denies consumers what they expect from food regulation. Guidelines under 2.4.6 might be a more flexible approach. If all members of the food industry were subject to the same codes, removing the competitive aspect, such Codes are more likely to be successfully implemented.

At present, for example, of the 19 ways in which propionate preservatives E280-283 can be added to food, only 8 are regulated by food standards and must appear on labels; of the 131 ways in which glutamate flavour enhancers E620-625 can be added to food, only 12 are regulated by food standards and must appear on labels; and of the 14 ways in which nitrate/nitrite preservatives E249-252 can be added to food, only 8 are regulated and must appear on labels. This practice is spreading and is designed to fool consumers and avoid regulation.

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:

The risk framework appears suited to development of Codes of Practice, subject to the points raised about the framework in 2.2.1. These were the need to at least consider consumer expectations (do consumers see the new proposal as more risky than regulators and why?) and ensure there is some process so that there is public and consumer oversight of Automatic adoption and Minimal checks pathways.

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

Neutral

Free text box, no character limit:

Codes and guidelines might help industry considerably because they understand what problems could be usefully addressed in this manner, particular across several jurisdictions. But a parallel pathway is required to address the particular concerns raised by consumers which would not be priorities for the food industry, for example using Codes of Practice to bring unregulated additives into regulation, and having functional ingredients carry the number

of the previously regulated food additive to which they are chemically identical. If all members of the food industry were subject to the same codes, removing the competitive aspect, such Codes are more likely to be successfully implemented.

Component 2.2

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

Yes

Free text box, no character limit:

Current reviews of standards are extremely process oriented. One wonders whether a workshop approach would more quickly gather the required perspectives and ownership of the changes. In other words, be creative in more outcome-oriented processes.

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 present processes for Board membership need to be modernised and change would have the support of the Food Intolerance Network. This Network has been in existence for over 30 years, has a current membership of 21,156 families, and is the largest consumer organisation focused on food in Australia and New Zealand. Yet in that time, only twice has there been contact with Board members directly seeking our views. At Network request representatives did meet one Chairperson and there have been meetings with various FSANZ CEOs. The Network has never been consulted about prospective nominees to the Board. This legislative review itself accepted a 26 page submission three years ago without any subsequent contact from consultants. This seems a waste of experience and access to informed and concerned consumer viewpoints.

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:

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:

The present ability of those companies with money determining priorities for FSANZ workloads seems counter to the reason that FSANZ exists and removing that option has our full support. There is also a danger of regulatory capture with this practice, on the basis that "who pays the piper will call the tune."

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:

First, any levy should be applied not only to standards development but more broadly to help address critical research, review, education, monitoring and surveillance issues. It could also be applied to provide advice to food companies on interpretation of standards. Such a levy would allow expansion of the functions of FSANZ to better meet the expectations of consumers and all other stakeholders.

Second, it has long been our view that industry should pay for what is effectively free insurance. Those affected by food and food additives cannot sue food companies for illness because the ingredients have been approved at the Commonwealth level. Such security should come at some cost. It was surprising to find in this review that only 4% of FSANZ revenue comes from cost recovery and that needs to be addressed.

Thus the impact would be substantial in adequately resourcing those who regulate a \$132 billion industry that employs over 270,000 people and who presently pay a tiny fraction towards that regulation.

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 suggestion made appears balanced - "A levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia" by revenue. The net would need to include supermarkets and to take support and advice from the Australian Food and Grocery Council. Food growers would not be included as many of them are already in various levy arrangements. Transport and distribution companies should probably not be included.

As for administration, the response to the next question details how this has occurred effectively for another sector for nearly 70 years.

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:

At the request of nearly all sectors of agriculture, levies have been collected on commodities and products that are produced within Australia since at least 1957. It is an accepted part of agriculture that the \$500 million coming from levies contributes towards the services provided by government such as research and development, extension services, marketing, residue testing, and biosecurity emergencies. Industry bodies help disburse this money to ensure ownership of the results.

The current levy rates and range of commodities can be seen here <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates> and could provide a guide towards developing an equitable system for food beyond the farm gate.

Such a levy could be scaled to the size of the enterprise paying. Thus \$0-20 million revenue might be set at 0.20% of the revenue, \$20-70 million at 0.10% of revenue, or by some formula to avoid steps. Modelling would allow equitable level to be determined. A back of the envelope calculation suggests this might raise ten times more than current industry contributions towards regulation, say about \$10 million per annum or half of FSANZ's current reduced budget.

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

Positive

Free text box, no character limit:

Around 350 years ago a French finance minister famously declared that "the art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing." There will be hissing, but also pressure on FSANZ to sharpen their processes in return for greater revenue.

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

Yes

Free text box, no character limit:

Consumers have long expected that if there were side-effects from foods then government would tell them, but this education role has never been systematically undertaken. For instance, even the conservative World Health Organisation has admitted that some 20-30% of children react to sulphite preservatives (220-228) with asthma symptoms while Australian research has found that up to 65% of asthmatic children are affected. But in a 2008 Network survey of 634 people, 67% had never heard that fact. This also means that they did not understand why there are mandatory warning labels on products containing above 10ppm sulphites.

Why require a mandatory label if consumers have no idea why or what action they should take? This role should not be left to unpaid volunteers.

Given rising consumer concerns over Ultra-Processed Foods (UPFs) and their links to all causes of mortality, this education role could perhaps be taken up on a cost-recovery basis, providing materials to schools, adults etc.

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?

Yes

Free text box, no character limit:

The \$13,000 average cost of each food recall coordination was astonishing, particularly as it is not a cost to the industry and amounts to free insurance. Agricultural levies (examples in 2.3.3) have long been used for biosecurity emergencies and food levies should be applied in the same manner, rather than the Commonwealth and States/Territories picking up the entire tab.

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:

See comments under 2.3.3: "A levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia" by revenue. The net would need to include supermarkets and to take support and advice from the Australian Food and Grocery Council. Food growers would not be included as many of them are already in various levy arrangements. Transport and distribution companies should probably not be included. Such a levy could be scaled to the size of the enterprise paying. Thus \$0-20 million revenue might be at 0.20% of the revenue, \$20-70 million at 0.10% of revenue, or by some formula to avoid steps. Modelling would allow equitable level to be determined.

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:

Assuming this question relates to additional project work other than food recalls, such as surveys, FSANZ should as a matter of best practice seek contributions from other jurisdictions for extra work.

Expanding cost recovery to States/Territories might also have a positive benefit by putting pressure on them to surrender some enforcement powers so that these powers might be used nationally and more rationally than presently.

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

Positive

Free text box, no character limit:

Agricultural levies (examples in 2.3.3) have long been used for biosecurity emergencies and food levies should be applied in the same manner, rather than the Commonwealth and States/Territories picking up the tab.

How would this need to be implemented to be successful?

Free text box, no character limit:

That is up to FSANZ, who are most experienced in food recalls, but experience with application of levies to biosecurity emergencies suggests that partial outsourcing for such episodic work might work.

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

Other

Free text box, no character limit:

As suggested earlier, the cost of food recalls should come from a central food levy rather than providing free taxpayer "insurance", therefore no separate annual recall levy is required.

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

Not Answered

Free text box, no character limit:

Only a small 10% of FSANZ revenue currently comes from other governments (excluding New Zealand which contributes 8%). In an ideal world, Commonwealth and State Ministers might agree to a plan which assigned agreed proportions of costs to the various jurisdictions for particular work, such as a national dietary survey. Is FSANZ really a price-taker in such matters?

Expanding cost recovery to States/Territories might also have a positive benefit by putting pressure on them to surrender some enforcement powers so that these powers might be used nationally and more rationally.

How would this need to be implemented to be successful?

Free text box, no character limit:

With a great deal of committee work and "hissing".

Component 2.3

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

No

Free text box, no character limit:

Not from the Food Intolerance Network.

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:

One can only hope for a shared vision. Having worked at this level, NSW and Victoria as the largest States exercise most power and seek always to shift costs to the Commonwealth while maintaining their own priorities and powers. Mingle this with shifting conservative/progressive politics at both levels and ... one can only hope.

So it will be implemented carefully with many committees and presumably much of this is already occurring.

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

Free text box, no character limit:

It is not clear how either party would obtain good input from consumers as to the issues to which they would give priority. FSANZ appears to have no present mechanism to obtain the views of consumers per se and their regular surveys are about the perception of FSANZ's performance, not about what others expect them to do. Ministers equally are subject to lobbying from many sides with variable consumer input. So one factor in the matrix might be to test whether consumer views have been rationally and systematically included or whether "squeaky wheels" and industry lobby groups have predominated.

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

Free text box, no character limit:

No further comment.

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 attends these meetings as an observer. The bewildering range of agencies involved from States/Territories and the formal structure of these meetings, dominated by the two major States, makes it unlikely useful interactions will occur at the meetings themselves. Therefore some form of prior or regularly scheduled routine engagement would be of benefit to all.

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

Free text box, no character limit:

The present limited scope of FSANZ's activities will be redressed to some extent by revision of their legislation, resources and practices as proposed, making FSANZ a more attractive avenue for achieving broader policy objectives.

For instance, the improved definition of safety that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour will create opportunities for both bureaucrats and Ministers to achieve their objectives through FSANZ in public health, food safety, sustainability, security and two-way trade arenas.

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:

This initiative has the support of the Food Intolerance Network because, while current data is appreciated, much other data informing consumers and public health researchers and officials is fragmented and difficult to access. The more Australia knows about actual food consumption practices and effects on consumers the more likely it is that long-term health effects can be addressed.

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

Free text box, no character limit:

FSANZ need to accept the role of collecting and analysing adverse experience events relating to food.

Several overseas jurisdictions (eg US Food and Drug Administration and European Food Safety Authority) and some Australian agencies (eg Therapeutic Goods Administration TGA, Australian Pesticides and Veterinary Medicines Authority APVMA, Australian Industrial Chemicals Introduction Scheme AICIS) perform this function and make public such information.

FSANZ has in the past rejected this role as unscientific, ignoring the fact that observation is the first step of sound science. This is how the dangers of thalidomide first become visible, for instance. In the absence of such a reporting system, the Food Intolerance Network has collected such reports ad hoc over 30 years into a searchable database of sorts which has identified trends and emerging issues, empowered consumers and informed lobbying for change. It can be searched for additives such as 160b or 635, or for symptoms.

https://fedup.com.au/index.php?searchword=&ordering=newest&searchphrase=all&option=com_search&catid=84.

Foods can provide side-effects that are as powerful as those from medical drugs and these pharmacological side-effects need to be systematically acknowledged.

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:

This is certainly supported by consumers as an expanded role for FSANZ will require access to wider scientific expertise. It is our view that the EU is leading the world while the USA lags, the Global Burden of Disease Risk Factor Estimate from 1990 to 2016 showing their diet was the leading cause of death in the USA.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The improved definition of safety that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour will require the widest possible scientific input about the burgeoning effects of Ultra-Processed Foods. Such expertise cannot be found within any single agency, which is why the Food Intolerance Network continues to push for National Food Authority.

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:

Any change that increases clarity for enforcement has the support of consumers. But one wonders how, for instance, a Statement of Intent that regulates a Standard for say propionates 280-283 to limit how much can be used could deal with the emerging issue that of the 19 ways in which they can be added to food, only 8 are regulated by the Standard?

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:

See above response for the problems that will emerge. Industry guidelines might be more sensible and flexible.

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:

Industry guidelines might be a more flexible way (rather than Codes of Practice or Statements of Intent) to address the problem of previously regulated food additives being added as ingredients in unregulated amounts to fool consumers, as detailed in comment on 2.2.6.

Guidelines could require that the functional ingredient includes the number of the food additive to which it is chemically identical, accurately informing the consumer. For example, you would need to be a food technologist to recognise that "fermented wheatflour", in a bread ingredients list, is added as a preservative chemically identical to regulated Propionic acid 280. If all members of the food industry were subject to the same guideline, removing the competitive aspect, such guidelines are more likely to be effective.

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:

Component 2.4.7

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

Yes

Free text box, no character limit:

Yes, but there needs to be real collaboration and an increased willingness to hear complaints and act on them.

Enforcement has been the most frustrating issue for consumers for many years, as detailed in our original submission <https://fedup.com.au/fin-campaigns/fsanz-act-review-2020> "... if a consumer wishes to lodge some sort of complaint about a food at present then often it is required to be lodged not where the food is purchased, but where it is manufactured. Some States do not accept complaints from consumers out-of-state. In some States enforcement is then left to a local council without any expertise to even understand the problem, let alone the powers to amend it..."

The Mexican stand-off between FSANZ and the Australian Competition and Consumer Commission ACCC is particularly galling, with each passing complaints backwards and forwards without resolution.

One should note, however, that State enforcement bodies are little better. Months pass and sometimes an apparent resolution is reached, but a check a year later shows the same problem continues without penalty.

Component 2.4

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

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Yes

Free text box, no character limit:

For adverse side-effects from just one food additive:

As detailed in 2.3.3, somewhere between 20-67% of children react to sulphite additives (220-228) with asthma symptoms. Asthma Australia put the estimated cost of asthma in Australia in 2015 at \$28 billion. The Australian Human Rights Commission says there are about 5 million children in Australia. Taking a mid-point for prevalence, the impact of just this one additive on 2 million children affected might be as high as \$2.3 billion per annum. Since about two-thirds of people don't know about the connection between asthma and sulphites, there would be an immense benefit to FSANZ undertaking an education role.

See more particular illnesses linked to particular food additives in Table 4 https://www.slhd.nsw.gov.au/rpa/allergy/research/foodintolerance_racn.pdf

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

No

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Yes

Free text box, no character limit:

Yes broadly speaking but see concerns about consumer input throughout these comments.

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

Yes

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Yes

Free text box, no character limit:

Please add a recommendation that, although the current Terms of Reference excluded the possibility, the only way to clean up the hyper-byzantine food area is to conduct a root and branch review of the entire sector, canvassing the ideal of a National Food Authority, perhaps reporting to an Australian Food Council, and the imposition of levies on the food and grocery industry to help address critical research, monitoring and surveillance issues. Its roles could include:

1. a central unit to develop national food policy that considers emerging and strategic issues in food safety, sustainability, security and two-way trade;
2. strategic direction and funding of food research in all aspects including an explicit definition of safety for consumers that covers nutrition, both short and long-term physical and mental health, and effects on attention and behaviour;
3. centrally coordinated education for consumers and industry on food, food-health claims and food-related public health objectives;
4. development and approval of food standards at a national level with sunseting ensuring regular re-examination of new scientific evidence;
5. implementation and competent enforcement of food standards nationally and for import/export trade, including penalties for food fraud and crime; and
6. a trusted system to advise, survey and monitor failures and achievements of policy objectives

Other comments

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

Yes

Free text box, no character limit:

Members of the Food Intolerance Network feel strongly that the Impact Assessment should not exclude FSANZ from developing an education role with food safety education materials because there is no other body in Australia who undertakes this essential task. Details about just one aspect (sulphites and asthma) have been given above, but examples could be multiplied. This should not be left to unpaid volunteers as at present.

In 4. Rationale for government action – Lack of stakeholder support - we did wonder why consumers were not seen as stakeholders while industry was?

Thanks to members of the Food Intolerance Network who helped with this response. Any details mentioned above can be verified with citations and links by contacting Dr Howard Dengate [REDACTED]

Thank you for the huge amount of work you consultants have all put into understanding and clarifying the multiple dimensions of this complex area.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-03-25 00:51:16

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Tim Budden

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Dental and Oral Health Therapists Association

Which sector do you represent?

Other (please specify)

Other: :
Professional Body

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::
[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:

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

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

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

Prefer not to respond / I don't know

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

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Including a clear definition of "public health and safety" is likely to help reduce confusion. A precise definition would give stakeholders a better understanding of the scope and parameters within which FSANZ operates in safeguarding public 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?

Yes

Additional comments (optional):

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

Positive

Additional comments (optional):

There may be a number of impacts, including:

- enhanced regulatory clarity (stakeholders have a better understanding of FSANZ's mandate and objectives)
- improved risk assessment processes (determining which risks are relevant to public health and safety)
- greater accountability
- facilitated communication and collaboration (common understanding of the goals and priorities related to public health protection would promote more effective dialogue on food safety issues)
- support for evidence-based decision-making
- increased public confidence in food safety

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:

- Incorporate Ministerial Policy Guidance into public consultation processes conducted by FSANZ. This allows stakeholders, including industry representatives, consumer groups, health professionals, and the public, to provide input and feedback on how policy guidance is being considered in the development of food regulatory measures.
- Publish Ministerial Policy Guidance documents on government websites and other accessible platforms to ensure transparency and visibility. Clearly communicate how these guidance documents are intended to inform the development of food regulatory measures and how they align with broader policy objectives.
- Provide guidance on how Ministerial Policy Guidance should be interpreted and applied in the development of food regulatory measures. This may include specific criteria, principles, or decision-making frameworks that should be considered when drafting regulations or standards.
- Conduct targeted stakeholder engagement activities, such as workshops, forums, and webinars, to educate stakeholders about Ministerial Policy Guidance and its role in shaping food regulatory measures. Provide opportunities for dialogue and discussion to ensure that stakeholders understand the implications of the guidance and can provide informed input.
- Keep stakeholders informed about the status and progress of food regulatory measures that are being developed in consideration of Ministerial Policy Guidance.

- Document the consideration of Ministerial Policy Guidance in the development of food regulatory measures in reports, regulatory impact assessments, and other official documents. Clearly articulate how the guidance has influenced decision-making and the rationale behind regulatory choices.

- Establish feedback mechanisms to gather input from stakeholders on how effectively Ministerial Policy Guidance is being incorporated into the development of food regulatory measures. Use this feedback to identify areas for improvement and make adjustments as needed.

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:

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

Not Answered

Free text box, no character limit:

- FSANZ could explicitly acknowledge the value of Indigenous traditional knowledge related to food and nutrition. This could involve recognizing Indigenous food systems, traditional food practices, and the nutritional benefits of Indigenous foods.

- FSANZ could incorporate cultural considerations into its risk assessment processes. This may include recognizing Indigenous cultural practices related to food preparation, storage, and consumption, and considering how these practices may impact food safety and nutritional outcomes.

- FSANZ could establish mechanisms for meaningful consultation with Indigenous communities and stakeholders during the development of food standards and regulations. This would involve engaging with Indigenous representatives to seek their input, feedback, and perspectives on matters related to food safety, nutrition, and cultural considerations.

- FSANZ could incorporate Indigenous language and terminology into its documents, guidelines, and communications to promote cultural sensitivity and respect. This may involve using Indigenous language names for foods, incorporating Indigenous terminology related to food preparation and consumption, and providing translations of key documents into Indigenous languages where appropriate.

- FSANZ could ensure representation of Indigenous experts and representatives on its advisory committees and working groups. This would ensure that Indigenous perspectives are considered in the development of food standards and regulations and that Indigenous expertise is recognized and valued.

- FSANZ could recognize and support Indigenous food sovereignty, which encompasses the rights of Indigenous peoples to control their food systems, including access to traditional foods, land, and resources. This may involve developing policies and guidelines that support Indigenous food sovereignty and recognize the importance of Indigenous food systems to health and well-being.

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:

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

Free text box, no character limit:

The risk framework should be based on robust scientific evidence, including data from epidemiological studies, laboratory analyses, risk assessments, and systematic reviews. This evidence should be relevant to the specific food safety or nutritional issues being addressed and should be of high quality and reliability.

- Identify potential hazards associated with changes to the Food Standards Code, including microbiological, chemical, and physical hazards. Consider

known hazards associated with similar foods or ingredients, as well as emerging hazards or novel food technologies.

- Assess the likely exposure of consumers to hazards associated with changes to the Food Standards Code. This may involve estimating dietary exposure levels, consumption patterns, and population demographics to determine the potential risk posed by specific foods or ingredients.
- Characterize the nature and severity of identified hazards, including their toxicological properties, dose-response relationships, and potential health effects. Consider factors such as the potency of toxins, the susceptibility of vulnerable populations, and the likelihood of adverse health outcomes.
- Integrate hazard identification, exposure assessment, and hazard characterization to conduct a comprehensive risk assessment. Evaluate the likelihood and severity of adverse health effects associated with changes to the Food Standards Code, taking into account uncertainties and variability in the data.
- Conduct a cost-benefit analysis to assess the potential economic, social, and health impacts of different risk management options. Evaluate the costs of implementing changes to the Food Standards Code against the expected benefits in terms of reduced risks to public health and safety.
- Engage with stakeholders, including industry representatives, consumer groups, public health organizations, and government agencies, throughout the risk assessment and risk management process. Seek input, feedback, and expert advice to ensure that the risk framework reflects diverse perspectives and considers relevant issues.
- Assess the administrative, compliance, and enforcement costs associated with implementing new regulations or standards.
- Ensure transparency and accountability throughout the risk assessment and risk management process. Document the criteria and evidence used to inform decision-making, communicate findings to stakeholders, and solicit feedback on proposed changes to the Food Standards Code.

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

Neutral

Free text box, no character limit:

Component 2.2.2

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

Yes

Free text box, no character limit:

Accepting risk assessments from international jurisdictions allows FSANZ to leverage the expertise and resources of other regulatory agencies with relevant experience and capabilities in risk assessment and management. By tapping into international best practices, scientific expertise, and risk assessment methodologies, FSANZ can benefit from a broader knowledge base and diverse perspectives in evaluating food safety risks.

Accepting risk assessments from international jurisdictions reduces the need for FSANZ to duplicate efforts in conducting its own risk assessments for every application or proposal. This streamlines the review process, saves time and resources, and avoids unnecessary duplication of work, enabling FSANZ to focus its resources on higher-priority activities and areas of greater risk.

Accepting risk assessments from international jurisdictions enables FSANZ to respond more quickly and effectively to emerging food safety risks or regulatory challenges. By leveraging pre-existing risk assessments or scientific evaluations from international partners, FSANZ can expedite the review process, accelerate decision-making, and implement appropriate risk management measures in a timely manner to protect public health.

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:

- Recognizing international standards allows FSANZ to align its regulatory framework with global best practices, leveraging the expertise and experience of international organizations. By adopting internationally recognized standards, FSANZ can ensure that its regulations are based on the latest scientific evidence and consensus among experts worldwide.

- Automatic recognition of international standards can streamline the assessment process for applications and proposals related to food standards. FSANZ can reference existing international standards that have already undergone rigorous scientific review and consensus-building processes. This saves time and resources, allowing FSANZ to focus its efforts on areas where additional scrutiny or customization is needed.

- International standards are often developed using a risk-based approach, focusing on the identification and management of significant risks to human health and safety. By incorporating these standards into its regulatory framework, FSANZ can adopt a more consistent and systematic approach to risk assessment and management. This ensures that regulatory decisions are based on an objective evaluation of the likelihood and severity of potential risks.

- Automatic recognition of international standards enables FSANZ to apply a proportionate regulatory response to different food products and processes.

Instead of imposing burdensome regulatory requirements on all products, FSANZ can tailor its regulatory approach based on the level of risk posed by specific foods or ingredients. This promotes regulatory efficiency and minimizes unnecessary regulatory burdens on industry while still protecting public health and safety.

- Recognizing international standards facilitates global harmonisation of food regulations, promoting consistency and coherence across international markets. This benefits food producers, exporters, and consumers by reducing barriers to trade and enhancing market access for safe and compliant products. It also fosters international cooperation and collaboration in addressing shared challenges related to food safety and quality.

- Encourages collaboration and capacity building between FSANZ and other national and international regulatory agencies. By participating in international standard-setting processes, FSANZ can contribute its expertise and insights while also learning from the experiences of other jurisdictions. This exchange of knowledge and best practices strengthens FSANZ's regulatory capabilities and enhances its effectiveness in protecting public health and safety.

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:

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:

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

Neutral

Free text box, no character limit:

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

Yes

Free text box, no character limit:

FSANZ could establish an expedited review process for minor amendments or updates to existing food standards that do not require extensive scientific assessment or stakeholder consultation. This would enable FSANZ to address minor issues or make routine updates more efficiently, without the need for lengthy regulatory procedures.

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:

Increasing opportunities for decision-making arrangements to be delegated may enhance FSANZ's flexibility, efficiency, and effectiveness in managing regulatory activities by streamlining decision-making processes, promoting agility and responsiveness, optimising resource allocation, leveraging expertise, engaging stakeholders, and managing risks more effectively.

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

Free text box, no character limit:

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

Neutral

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.2.4

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

Yes

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Given ADOHTA is not an expert in this field, some broad initiatives that may considered include:

FSANZ could adopt interdisciplinary approaches to food regulation, bringing together experts from diverse fields such as food science, nutrition, public health, environmental science, economics, and social sciences. This interdisciplinary approach would enable FSANZ to consider the broader implications of food standards on human health, environmental sustainability, economic development, and social equity.

FSANZ could incorporate lifecycle analysis into its assessment of food standards, considering the environmental, social, and economic impacts of food production, processing, distribution, consumption, and disposal. This holistic approach would help FSANZ identify opportunities to promote more sustainable food systems and mitigate negative externalities associated with food production and consumption.

FSANZ could engage with communities and stakeholders to ensure that their voices and perspectives are heard in the development of food standards. This could involve community consultations, citizen science initiatives, participatory decision-making processes, and community-led research projects to promote inclusivity, transparency, and accountability in food regulation.

FSANZ could prioritise health equity and social justice considerations in the development of food standards, addressing disparities in access to healthy and nutritious foods, and addressing social determinants of health such as income, education, and access to healthcare. This could involve adopting policies and interventions that promote equitable access to safe, affordable, and nutritious foods for all population groups, including vulnerable and marginalized communities.

FSANZ should recognise and incorporate cultural diversity and Indigenous knowledge into its consideration of food standards, respecting traditional food practices, cultural preferences, and Indigenous food systems. This could involve consulting with Indigenous communities, incorporating Indigenous perspectives into decision-making processes, and promoting the use of traditional and culturally appropriate foods in food standards.

FSANZ could address the challenges of climate change, globalisation, and other systemic risks to food security and nutrition by promoting resilience and adaptation in food systems. This could involve developing strategies to mitigate the impacts of climate change on food production, promoting local and regional food systems, and fostering innovation and adaptation in food production and distribution.

FSANZ could collaborate with international partners and organisations to harmonize food standards, share best practices, and address global challenges in food regulation.

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:

Codes of Practice and guidelines offer flexibility in addressing specific issues or concerns without the need for formal amendments to the Food Standards Code. They can provide practical guidance and recommendations for industry stakeholders on how to comply with regulatory requirements, adapt to

emerging trends, or address specific challenges in food production, processing, or distribution.

Codes of Practice and guidelines can be developed and updated more quickly than formal amendments to the Food Standards Code. This allows regulatory agencies to respond promptly to emerging issues, new scientific evidence, or changes in industry practices without lengthy regulatory processes.

Developing and maintaining Codes of Practice and guidelines will generally require fewer resources compared to developing or varying standards in the Food Standards Code. This makes it more feasible for regulatory agencies to address minor or low-priority issues that may not justify the time and resources required for formal regulatory amendments.

Codes of Practice and guidelines provide valuable guidance and support to industry stakeholders, helping them understand and comply with regulatory requirements. By providing clear, practical recommendations, these documents can promote consistency and best practices across the food industry, enhancing food safety, quality, and compliance with regulatory standards.

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:

On 25 February 2024 new requirements for allergen labelling come into force as set out in Standard 1.2.3 and Schedule 9 of the Food Standards Code. These changes help people find allergen information on food labels more quickly and easily and allow them to make safe food choices. This could be quite confusing to navigate and understand.

Developing a Code of Practice or guideline specifically addressing the labeling of gluten-free products could help clarify labeling requirements, provide guidance on testing methods for gluten detection, and outline best practices for ensuring compliance with regulatory standards.

By providing clear, practical guidance on labeling requirements for gluten-free products, a Code of Practice or guideline could help promote consistency and transparency in labeling practices across the food industry.

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

Free text box, no character limit:

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

Positive

Free text box, no character limit:

Component 2.2

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

No

Free text box, no character limit:

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Component 2.3.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

The following are more broad expectations of the impacts an industry-wide levy.

Positive impacts may include:

- a stable and reliable source of funding for regulatory activities, including food safety inspections, monitoring, enforcement, and research. This would ensure that regulatory agencies such as Food Standards Australia New Zealand (FSANZ) have the necessary resources to carry out their mandate effectively and efficiently.
- it can promote fairness and equity. This prevents a disproportionate burden from falling on individual businesses or sectors within the industry and ensures that all participants contribute to the costs of maintaining a safe and compliant food supply.
- spreads the financial burden across the entire industry. This can reduce the regulatory burden for individual businesses, particularly smaller businesses with limited resources.
- could create financial incentives for businesses to comply with food safety regulations. By linking levy payments to compliance with regulatory standards, businesses are motivated to invest in food safety measures and best practices to avoid penalties and maintain their reputation.

Negative impacts may include:

- some businesses within the industry may face increased costs of operation. This could be particularly challenging for smaller businesses or those operating on thin profit margins.
- certain sectors within the food industry may be disproportionately affected by an industry-wide levy, depending on factors such as their size, revenue, and level of regulatory compliance. This could create challenges for businesses in these sectors and potentially lead to market distortions.
- implementing and managing an industry-wide levy requires administrative resources and infrastructure. Businesses may incur additional administrative burden in complying with levy reporting and payment requirements, particularly if the levy is complex or involves multiple layers of bureaucracy.
- some businesses within the industry may oppose the implementation of an industry-wide levy. This could lead to resistance or lobbying efforts to oppose or modify the levy.

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

Free text box, no character limit:

Base eligibility criteria on clear and objective factors that are relevant to the purpose of the levy, such as business size, revenue, production volume, or market share.

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Negative

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?

Per recall

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

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:

Define clear governance structures and processes for joint agenda setting, including roles, responsibilities, decision-making mechanisms, and communication channels between FSANZ and FMM. This ensures clarity and accountability in the joint agenda-setting process.

Engage stakeholders, including industry representatives, consumer groups, public health organizations, and other relevant parties, in the joint agenda-setting process. Solicit input, feedback, and perspectives from stakeholders to inform priorities and decisions.

Define clear objectives and criteria for prioritising system priorities, taking into account factors such as public health impact, regulatory effectiveness, stakeholder priorities, resource availability, and feasibility of implementation.

Foster collaboration and communication between FSANZ and FMM through regular meetings, workshops, working groups, and other forums for dialogue

and exchange of information. Establish mechanisms for sharing data, evidence, and insights to inform joint agenda setting.

Base decisions on an evidence-based approach, drawing on scientific evidence, data, research findings, and expert analysis to inform prioritization of system priorities. Ensure that decisions are grounded in robust evidence and analysis to maximize the effectiveness of the regulatory framework.

Regularly evaluate and review progress in implementing joint agenda-setting priorities, assessing outcomes, impacts, and effectiveness. Use feedback mechanisms to gather insights from stakeholders and make adjustments as needed to optimize outcomes.

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

Free text box, no character limit:

When developing a joint prioritization matrix it's important to consider a range of factors that reflect the diverse perspectives, priorities, and challenges within the food regulatory system. These factors should encompass various dimensions, including public health, food safety, regulatory effectiveness, stakeholder interests, and resource constraints. Key factors include:

- public health impact
- food safety risk
- regulatory effectiveness
- stakeholder Priorities
- emerging issues and trends
- resource availability
- legal and policy considerations
- community and consumer preferences
- international harmonisation and trade implications

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

Free text box, no character limit:

Component 2.4.2

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

Yes

Free text box, no character limit:

Enhanced information sharing
Improved coordination
Early identification of issues
Streamlined decision-making
Optimised use of resources
Enhanced stakeholder confidence

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

Free text box, no character limit:

Component 2.4.3

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

Yes

Free text box, no character limit:

FSANZ assuming a role as a database custodian for Australia could significantly improve intelligence sharing across the regulatory system by:

- providing a centralised platform for data management,
- promoting collaboration and coordination among regulatory agencies,
- enhancing risk assessment and management capabilities,
- facilitating timely alerts and notifications,
- enhancing transparency and accountability, and
- optimizing resource utilisation.

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

Free text box, no character limit:

Food safety incidents
Regulatory compliance data
Product and ingredient information
Nutritional information
Surveillance data from monitoring programs, foodborne illness surveillance networks, laboratory testing results, environmental monitoring, and trend analysis of food safety indicators.
Consumer complaints and feedback
Economic and trade 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:

Establishing information sharing arrangements with international partners is essential for enhancing global cooperation, improving risk management practices, harmonising regulatory approaches, and safeguarding public health in the increasingly interconnected and interdependent world of food safety and regulation. By leveraging the collective expertise and resources of the international community, regulatory agencies can better address shared challenges and achieve common goals in protecting consumers and ensuring the safety and integrity of the food supply.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Yes

Free text box, no character limit:

Clarity and transparency
Consistent interpretation
Risk-based approach
Facilitated compliance
Enhanced communication and engagement
Consistency in enforcement
Continuous improvement

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Component 2.4.7

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

Yes

Free text box, no character limit:

Component 2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

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

Yes

Free text box, no character limit:

ADOHTA represents dental and oral health therapists. These oral health professionals are qualified to diagnose and treat dental diseases across all age groups and work across both public and private sectors, as well as in academia, health policy, and teaching. Food standards have significant impacts on general and oral health, and although ADOHTA members are not directly impacted by the FSANZ Act there are aspects of the Act, such as nutritional standards and food labelling, which can have impacts on consumer oral health. It is well known sugars contribute to dental decay, FSANZ standards that promote healthier food choices can have a positive impact on oral health. FSANZ also regulates food labelling requirements - clear and accurate labelling can help consumers make informed choices about their food and beverage consumption which can influence oral health outcomes.

ADOHTA hopes this review results in a stronger Act, enabling Australian's access to food of a high standard, that is also leads to better general and oral health outcomes.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-03-25 09:36:37

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Daniel Osborne

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
City of Casey

Which sector do you represent?

Government

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::
[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:

No Issues

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

Free text box, no character limit:

No

Section 3 - The problems to solve (Ratings)

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

Yes

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:

N/A

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Amending Section 3 and 18 of the Act to include a definition of public health and safety has the potential to reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards. Careful consideration will be required in terms of the wording utilised. For example, the definition adopted by the FMM 'Public health and safety in relation to food refers to 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' is still very broad and does not allow for the role that the consumer behaviour plays when it comes to health impacts and food consumption.

The role of FSANZ should be to regulate those aspects that relate to the creation of food up to the point of purchase by the consumer. What happens thereafter once the food is in the consumers' hands then becomes a matter for other Government bodies, not FSANZ.

Taking chocolate as an example - the role of a food regulator should be to regulate product manufacturers and importers of raw ingredients such that the chocolate available for purchase by the public is safe from the perspective of chemical, physical and microbiological composition as well as being clearly labelled as to ingredients, nutritional values, allergen information etc. It is not the place of food safety regulation legislation to try to make chocolate 'healthier' through mandating things such as sugar content. Firstly, chocolate is chocolate - it is a treat type of food and from a health perspective, should be enjoyed in moderation. Secondly, where manufacturers reduce sugar content, they tend to replace it with something else due to the impacts on taste, product texture etc e.g. artificial sweeteners, which can have health implications of their own. If a consumer is presented with factual information on the label as to the nutritional content of a food and chooses to overindulge, this is their choice. Attempts to change consumer behaviour can be influenced in other ways, through other legislative mechanisms e.g. restrictions on display and advertising of products.

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?

Prefer not to respond / I don't know

Additional comments (optional):

Unknown - question best answered by FSANZ

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

Positive

Additional comments (optional):

If done correctly, in theory, it should have a positive impact as it would aid in increasing clarity.

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:

The consideration of Ministerial Policy Guidance in the development of food regulatory measures could be effectively communicated by providing a summary of what the guidance is, followed by information as to how the guidance has led to the development of a food regulatory measure as part of the documentation sent out as part of a consultation process. It could either be contained in a FAQ type document or form part of the background information provided in a consultation document.

Component 2.1.3

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

No

Free text box, no character limit:

New provisions and/or language changes in the Act may better support FSANZ to recognise Indigenous groups.

It may also be worth considering that from the point of inclusiveness, the review of the FSANZ Act provides an opportunity to also include reference to the multicultural nature of our society and the varied cultural influences that intersect and have the potential to impact food safety.

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

No

Free text box, no character limit:

Whilst inclusion of provisions or language changes to the Act may provide an impetus to promote recognition of Indigenous culture, at the end of the day, they are just words in a piece of legislation. Concrete actions such as those described on page 27 of the Impact Analysis (e.g. the last 3 bullet points set out in column 1 of the table) are what is needed if tangible change is to occur.

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:

The introduction of a risk based framework should support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code.

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

Free text box, no character limit:

It is likely that models already exist in other jurisdictions/internationally that could be adopted.

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

Neutral

Free text box, no character limit:

Development of risk based food regulatory measures wouldn't be likely to have much, if any impact, as food regulation is already based on a risk based model in Victoria.

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:

Enabling FSANZ to accept risk assessments from international jurisdictions would support FSANZ to exercise risk-based and proportionate handling of applications and proposals by streamlining matters (there would be no need to repeat work already undertaken by another, reputable international

jurisdiction e.g. the EU).

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:

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:

Introducing a minimal check pathway for very low risk products would likely help FSANZ to improve their efficiency.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Neutral

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Neutral

Free text box, no character limit:

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

Free text box, no character limit:

The role/s the power of decision making is delegated to should be one that requires a background in food safety as a prerequisite of appointment.

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?

Yes

Free text box, no character limit:

An investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments would likely facilitate entry of traditional foods to market. It would likely save applicants time and money having to undertake this work themselves.

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?

Yes

Free text box, no character limit:

Guidance material is always useful.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.6

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

No

Free text box, no character limit:

Given that time and resources are also required to develop and maintain Codes of Practice and guidelines, whether any significant time savings would eventuate is unclear.

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Component 2.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

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

Neutral

Free text box, no character limit:

This would very much depend on which party is being considered. For example, it is likely that removing the option for expedited applications would assist with FSANZ workload prioritisation. On the other hand, expedited applications maybe of value to an applicant.

Component 2.3.3

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

Neutral

Free text box, no character limit:

Again, it would depend on which party is being considered. For industry, the impact could be neutral as any increase in costs would likely be passed onto the consumer of the product.

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

This would best be addressed at a jurisdictional level.

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?

Annual Levy

Free text box, no character limit:

Don't know, but from an administrative perspective, charging an annual levy would likely be simpler to manage.

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Yes

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Yes

Free text box, no character limit:

It may. It depends on what the underlying factors that currently impact on intelligence sharing across the regulatory system are.

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

Free text box, no character limit:

Data relating to food safety matters that are held by other regulatory agencies such as rates of food-borne illness, rate of non-compliance with food safety standards by business etc as well as information on research that is undertaken in relation to food safety. For example, in Victoria, regional and statewide surveys are undertaken by the Department of Health on a periodic basis on specific food safety topics of interest.

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:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Yes

Free text box, no character limit:

Introducing Statements of Intent into food standards would likely assist in improving consistent interpretation of food standards as it would provide insight and clarity into what the outcome is that a standard is trying to achieve. This in turn should facilitate a more consistent interpretation of the standard. As to whether this leads to greater consistency as to how a standard is enforced is another matter as other factors come into play when it comes to enforcement activities undertaken by regulatory agencies e.g. organisational culture.

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:

A Statement of Intent should address the question as to the purpose of a particular provision i.e. what is it trying to achieve and the evidence used by the creators to derive a provision.

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:

FSANZ being resourced to develop, update and maintain industry guidelines would likely improve consistent interpretation of food standards and also improve compliance levels. This in turn could impact on enforcement through a potential reduction in the need to enforce by regulators. Industry guidelines are not likely to directly contribute to increased consistent enforcement approaches by regulators. Enforcement guidelines would be needed to facilitate that.

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?

No

Free text box, no character limit:

If the Act were to be amended to allow FSANZ to develop guidelines in consultation with First Nations or Maori peoples, it may support the cultural considerations of these two groups being taken into account in the food standards process.

Given that the food standards are a national document, review of the FSANZ Act affords an additional opportunity to acknowledge the cultural diversity of our society and have this reflected in the Act. This would enable an inclusive based approach in terms of engagement regarding cultural considerations that would be reflective of the Australian food landscape.

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:

Component 2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

No

Free text box, no character limit:

Other comments

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

No

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-03-28 15:04:08

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
James Farrell

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Diabetes Australia

Which sector do you represent?

Consumer Organisation

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::
[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 Executive Summary of the IA states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all and as a result the methodology completely fails to factor this in.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused

simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

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

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

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

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

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

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

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

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

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

as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

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

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

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

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

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

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

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

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

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

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

No

Additional comments (optional):

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

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put

pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost. I

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

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

Positive

Additional comments (optional):

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

Component 2.1.2

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

Yes

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

Free text box, no character limit:

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

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

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

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

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

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are

appropriate to the regulation of food as it relates to their culture and health.

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

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

Yes

Free text box, no character limit:

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

Component 2.1

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

Yes

Free text box, no character limit:

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

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

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

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

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

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

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

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

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

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

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

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

No

Free text box, no character limit:

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

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

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

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

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

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

Free text box, no character limit:

Component 2.2.4

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

No

Free text box, no character limit:

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

We note that without meaningful consultation there is a real risk of the 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?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the

development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

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

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

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

Yes

Free text box, no character limit:

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

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

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

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

Component 2.2.6

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.
Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

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

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

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

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

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

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

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

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

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

Positive

Free text box, no character limit:

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

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

Component 2.3.3

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

Positive

Free text box, no character limit:

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

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

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

Free text box, no character limit:

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

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

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?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

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

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

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

Free text box, no character limit:

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

Component 2.4.2

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

Yes

Free text box, no character limit:

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

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

Free text box, no character limit:

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

Component 2.4.3

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

Yes

Free text box, no character limit:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

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

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

Component 2.4.4

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

Yes

Free text box, no character limit:

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

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international

standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

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

Yes

Free text box, no character limit:

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

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

Component 2.4.7

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

Yes

Free text box, no character limit:

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

Component 2.4

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

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Yes

Free text box, no character limit:

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

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

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

Free text box, no character limit:

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

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

Prefer not to respond / I don't know

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:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

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

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1(low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this

must be specified and the risk for each assessed separately.

- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

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

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

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

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

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

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

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

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

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

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed,

with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

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

FSANZ's role in the food supply

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

Representation of public health and consumer stakeholder voice

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

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

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

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

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

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

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

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-02 15:16:08

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Robert Taylor

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Alcohol and Drug Foundation

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::
[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:

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

Free text box, no character limit:

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:

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):

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):

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

Positive

Additional comments (optional):

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:

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:

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:

Component 2.1

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

Yes

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?

No

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.2

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

No

Free text box, no character limit:

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:

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:

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:

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

Negative

Free text box, no character limit:

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

No

Free text box, no character limit:

Component 2.2.3

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

No

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.2.4

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

No

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

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

Yes

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Component 2.2.6

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

No

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Component 2.2

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

Yes

Free text box, no character limit:

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

No

Free text box, no character limit:

Component 2.3.2

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

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:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

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

No

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Yes

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Yes

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.4

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

Yes

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

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:

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:

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:

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

No

Free text box, no character limit:

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

Yes

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:

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

No

Free text box, no character limit:

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

Yes

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

No

Free text box, no character limit:

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

No

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Yes

Free text box, no character limit:

Other comments

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

No

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-04 17:51:21

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Holly Piontek Walker

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Diabetes Victoria

Which sector do you represent?

Consumer Organisation

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::
[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:

It is good to see the Impact analysis has recognised the need to strengthen the emphasis on FSANZ's role in long-term health and preventable diet-related disease. However, we would argue that the problem is not only one of stakeholder confusion, but rather the limited mechanisms to ensure long term health issues are actually adequately considered. Incorporating a definition of public health in the Act will be a positive step but more is required. We support the concept of a Public Health Test (as developed by The George Institute for Global Health) being incorporated into the Act.

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

Free text box, no character limit:

It is unclear from the impact analysis why sustainability was excluded by the Food Ministers Meeting (page 82). Sustainability should be a key concept considered in this process to modernise the legislation. The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks such as experienced with 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 that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety is a positive step and will help address the issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but also requires further definition as to how FSANZ will consider long term risks. FSANZ's role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

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):

Including the definition will be a positive signal but will not in itself change the existing requirements for considering long-term health. We disagree that confirming FSANZ's existing role to mitigate public health risks should be considered a cost to any stakeholder (as outlined in the cost benefit analysis methodology).

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

Positive

Additional comments (optional):

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

Component 2.1.2

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

Yes

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

Free text box, no character limit:

This can be documented in a report and publicly available on FSANZ's website.

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:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

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

Yes

Free text box, no character limit:

We suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

The George Institute for Global Health has proposed a Public Health Test that would meet this need.

The PUBLIC HEALTH TEST

Priority setting should consider:

The burden of disease attributable to the food supply [1];
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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question. The IA provides very limited details about the risk-based framework.

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 could form a core part of the risk framework.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.2

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

No

Free text box, no character limit:

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

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. The proposed Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements.

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.2.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

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

Yes

Free text box, no character limit:

We suggest the proposed Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to support prioritisation of reviews.

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

Yes

Free text box, no character limit:

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

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

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?

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

It is unclear how industry-led codes of practice would be effective in addressing public health risks.

Component 2.2

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

Yes

Free text box, no character limit:

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases.

Component 2.3

Component 2.3.1

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

No

Free text box, no character limit:

We recommend maintaining the number of public health positions on the board and ensuring that nominees are endorsed by core public health organisations.

Component 2.3.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Other

Free text box, no character limit:

Nil response

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.2

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

Component 2.4.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

We recommend the development of 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 broader burden of disease.

Component 2.4.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

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

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

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:

Component 2.4.7

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

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

Prefer not to respond / I don't know

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:

Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.

Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

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

Not Answered

Free text box, no character limit:

Data and expertise are available across 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.

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:

Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.

Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

Not Answered

Free text box, no character limit:

Data and expertise are available across 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.

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

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

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

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

No

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-08 15:51:00

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Kim Anastasiou

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Healthy Food Systems Australia

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

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

Yes

What is your email address?

Email address::
[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 main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

The approach undertaken to identify and prioritise policy problems has not been well documented and little detail is available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

We are disappointed that the current methodology fails to identify what we see as the key policy problems that need to be solved. In its current form, the Act does not enable the food regulatory system to meet its two primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This was raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021) and it has still not been addressed sufficiently. The methodology of just incorporating a definition of public health appears an attempt to minimise external stakeholder

confusion about FSANZ's existing roles and operations. An expanded definition is necessary, but it is insufficient to deal with the actual policy problem. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we support the development and incorporation of a Public Health Test (see response to the question in relation to other initiatives under component 2.1 for more details).

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

The IA presents only two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations (which is clearly a non-option), and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately differentiate the changes that genuinely require significant legislative and operational reform, from those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

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

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

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". Two of the negative externalities that the Act does not include via impact analysis are food systems security and vulnerability to environmental change/ impact on the environment (including climate change and biodiversity loss). This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is given lip service in feedback outlined in Section 7 of the Impact Analysis. We note that consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis. No reasoning has been given for this decision. The food regulatory system, as a major component of the broader food system, has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety, security and sustainability. It would further allow FSANZ to better align with other government strategies, such as Australia's Strategy for Nature (our national biodiversity strategy) and the intergovernmental Kunming-Montreal Global Biodiversity Framework. Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health (1). Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use (2-5). Food production is destined for collapse if environmental issues are not addressed.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability (6) and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. This means that in order to be current, and fit-for-purpose the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

(1) Watts, Nick et al. 2018 The 2018 report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come. *The Lancet* 392(10163), 2479 - 2514

(2) Crippa, M., Solazzo, E., Guizzardi, D., Monforti-Ferrario, F., Tubiello, F.N., Leip, A., 2021. Food systems are responsible for a third of global anthropogenic GHG emissions. *Nat. Food* 2 (3), 198–209.

(3) Earthscan 2007 Water for Food, Water for Life: A Comprehensive Assessment of Water Management in Agriculture. International Water Management Institute, London, UK.

(4) Benton, T.G., Bieg, C., Harwatt, H., Pudasaini, R., Wellesley, L., 2021. Food System Impacts on Biodiversity Loss. Three Levels for Food System Transformation in Support of Nature. Chatham House, London.

(5) Diaz and Rosenberg 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321, 926–929

(6) James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892.

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health (including food security and sustainability) when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

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

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

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability and should therefore not have equivalent or higher impact ratings than sub-problems dealing with these long-term health impacts.

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

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

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

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection (relating to short and long term consequences). There are no proposed reforms in the IA that will improve public health and consumer outcomes.

We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

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

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

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act (and then further in the Ministerial Guidelines) to address this (see response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term

health, including food security and food sustainability, and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, THE DIET-RELATED RISK FACTORS FOR THEM AND FOOD SECURITY AND SUSTAINABILITY, as well as acute food safety concerns."

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

No

Additional comments (optional):

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

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated priority role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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

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

Positive

Additional comments (optional):

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

Component 2.1.2

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

Yes

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

Free text box, no character limit:

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

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

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

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

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

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

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

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

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

Yes

Free text box, no character limit:

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

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes, food security and food sustainability cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews.

We strongly support a modified Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply;
- b) The environmental effects from the food supply; and
- c) Estimated benefit of change to the food supply (based on a) and b) above) from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as determined by the approach recommended by Dickie et al (1)
- 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, noting that the upcoming dietary guidelines are likely to consider sustainability impacts;
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease, i.e. ultra-processed foods and processed foods high in salt and added sugars;
- 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 (including costs associated with environmental issues, with climate change and biodiversity loss as key priorities);
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

It will also be important to educate existing staff within FSANZ who regularly make decisions regarding the definition of public health and, in particular, the ramifications of FSANZ decisions on longer term health, food security and sustainability. We have experience with our concerns often falling on deaf ears or being informed that these longer term impacts are not within FSANZ's remit.

(1) Dickie, S.; Woods, J.; Machado, P.; Lawrence, M. A novel food processing-based nutrition classification scheme for guiding policy actions applied to the Australian food supply. *Front. Nutr.* 2023, 10, 1071356

Component 2.2

Component 2.2.1

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

No

Free text box, no character limit:

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

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

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

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as a basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

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

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

Free text box, no character limit:

The Modified Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Test is the criterion; and then the risk framework should set out how the likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the 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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet a Modified Public Health Test.
- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted

bodies such as the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be only harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Modified Public Health Test (see response to the question in relation to other initiatives under component 2.1). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

It is unclear how this approach would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Modified Public Health Test.

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

No

Free text box, no character limit:

From the information provided, it appears that the minimal check pathway would only apply to applications and not proposals. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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

No

Free text box, no character limit:

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

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Modified Public Health Test. As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

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

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present.

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

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Modified Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Modified Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

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

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Modified Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

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

No

Free text box, no character limit:

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

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

There are also considerations of environmental aspects such a habitat damage, ecosystem disturbance and animal/plant population extinction if these foods were to be introduced commercially without appropriate regulatory support.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly.

Component 2.2.5

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

Yes

Free text box, no character limit:

We suggest the Modified Public Health Test is used to determine which reviews are undertaken and how they are prioritised.

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

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

Yes

Free text box, no character limit:

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

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

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

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

Component 2.2.6

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

In our opinion there are no matters that would have been better solved by a Code of Practice.

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:

No response.

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

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

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

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

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

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

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms.

This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon. Some examples:

- P1010 Review of Formulated Supplementary Sports Foods – commenced June 2019, consultation paper 2 completed Sept 2023, with no further timeline noted on FSANZ workplan.
- P1028 Infant Formula Products – commenced July 2013, numerous waiting periods between consultation periods and now final ministerial notification is for late June 2024.
- P1047 Review of regulatory nutrient reference values – Proposal prepared in August 2018 – and progress has been delayed due to other priorities.
- P1049 Carbohydrate and sugar claims on alcoholic beverages – commenced late August 2018 – proposed notification to ministers December 2024.
- P1056 Caffeine Review – commenced early June 2021 and end of consultation period March 2023 with no further dates for progress.

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

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

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

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

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

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

Positive

Free text box, no character limit:

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

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

Component 2.3.3

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

Positive

Free text box, no character limit:

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

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

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

Free text box, no character limit:

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

What 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:

No response.

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

Negative

Free text box, no character limit:

Compulsory fees would not result in a level playing field for all of industry and are likely to result in the risk of industry capture. Consumer and public health groups are also unlikely to be able to afford fees charged for progressing an application. Compulsory fees do not provide as secure a funding model as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovering services frequently represent a minority funding stream for standard-setters. This sort of activity will also likely negatively impact FSANZ's independence. Furthermore, it is also not 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:

No 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:

No 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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

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

Other

Free text box, no character limit:

No comment.

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:

No further comments.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

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:

No comment.

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1, so there is no need to change legislation to allow this.

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

Free text box, no character limit:

The Modified Public Health Test should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

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

Free text box, no character limit:

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

Component 2.4.2

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

No

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

Component 2.4.3

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

Yes

Free text box, no character limit:

We support this and strongly request that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

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

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact on public health nutrition, food security and sustainability outcomes. Data can help in identifying priorities, evidence-based development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed.

We recommend the development of 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
- Food composition
- Food sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Component 2.4.4

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

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

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

Component 2.4.5

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

Yes

Free text box, no character limit:

A Statement of Intent used to be a feature at the beginning of each food standard and it was helpful in understanding the reasoning for the Standard, and avoiding misinterpretations of the code. We would support the re-inclusion of statements of intent.

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:

No. The statement of intent should only relate to the FSANZ Priority Objectives - in relation to protection of public health and safety and to enable consumers to have sufficient information to make informed food choices.

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry, but where funding is scarce, this would be a lower priority.

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

Yes

Free text box, no character limit:

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

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

Component 2.4.7

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

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if this leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

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

No

Free text box, no character limit:

No 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:

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

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease, food security and food sustainability) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

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

Free text box, no character limit:

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

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

Prefer not to respond / I don't know

Free text box, no character limit:

No 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?

Yes

Free text box, no character limit:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

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

Prefer not to respond / I don't know

Free text box, no character limit:

No comment

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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, so it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health/food security/sustainability should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ’s organisational capacity to manage its current workload and address and manage risks relating to long-term health/sustainability impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

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

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn’t necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly

long-term health/sustainability – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ’s ability to consider risks to long-term health/sustainability, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

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

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

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

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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, safety and food sustainability.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is low (3). Furthermore, the food industry is a multi-billion dollar industry, capable of absorbing costs, compared with a publicly-funded healthcare sector which is overwhelmed and underfunded. The priority needs to clearly be in favour of protecting public health.

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:

No comment

Other comments

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

Yes

Free text box, no character limit:

Resourcing of FSANZ

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

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

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. This is particularly true for Australia as climate impacts are likely to more severely impact our agricultural areas than some other parts of the globe. Not only could this increase the likelihood of food shortages and thus impact our nation's food security, but natural disasters are breeding grounds for disease, which could have direct impacts on human health, with the possibility of food as a vector. Finally, many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

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

FSANZ's role in the food supply

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

further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

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

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

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

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

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

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

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 09:26:02

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Jennifer McCann

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
IPAN - Institute for Physical Activity and Nutrition, Deakin University

Which sector do you represent?

Research/Academic

Other: :
Deakin University

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 main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

The approach undertaken to identify and prioritise policy problems has not been well documented and little detail is available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

We are disappointed that the current methodology fails to identify what we see as the key policy problems that need to be solved. In its current form, the Act does not enable the food regulatory system to meet its two primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This was raised by the

majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021) and it has still not been addressed sufficiently. The methodology of just incorporating a definition of public health appears an attempt to minimise external stakeholder confusion about FSANZ's existing roles and operations. An expanded definition is necessary, but it is insufficient to deal with the actual policy problem. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we support the development and incorporation of a Public Health Test (see response to the question in relation to other initiatives under component 2.1 for more details).

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

The IA presents only two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations (which is clearly a non-option), and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately differentiate the changes that genuinely require significant legislative and operational reform, from those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

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

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

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". Two of the negative externalities that the Act does not include via impact analysis are food systems security and vulnerability to environmental change/ impact on the environment (including climate change and biodiversity loss). This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is given lip service in feedback outlined in Section 7 of the Impact Analysis. We note that consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis. No reasoning has been given for this decision. The food regulatory system, as a major component of the broader food system, has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety, security and sustainability. It would further allow FSANZ to better align with other government strategies, such as Australia's Strategy for Nature (our national biodiversity strategy) and the intergovernmental Kunming-Montreal Global Biodiversity Framework. Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health (1). Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use (2-5). Food production is destined for collapse if environmental issues are not addressed.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability (6) and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. This means that in order to be current, and fit-for-purpose the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

(1) Watts, Nick et al. 2018 The 2018 report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come. *The Lancet* 392(10163), 2479 - 2514

(2) Crippa, M., Solazzo, E., Guizzardi, D., Monforti-Ferrario, F., Tubiello, F.N., Leip, A., 2021. Food systems are responsible for a third of global anthropogenic GHG emissions. *Nat. Food* 2 (3), 198–209.

(3) Earthscan 2007 Water for Food, Water for Life: A Comprehensive Assessment of Water Management in Agriculture. International Water Management Institute, London, UK.

(4) Benton, T.G., Bieg, C., Harwatt, H., Pudasaini, R., Wellesley, L., 2021. Food System Impacts on Biodiversity Loss. Three Levels for Food System Transformation in Support of Nature. Chatham House, London.

(5) Diaz and Rosenberg 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321, 926–929

(6) James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892.

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health (including food security and sustainability) when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

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

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

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability and should therefore not have equivalent or higher impact ratings than sub-problems dealing with these long-term health impacts.

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

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

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

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection (relating to short and long term consequences). There are no proposed reforms in the IA that will improve public health and consumer outcomes.

We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

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

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

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act (and then further in the Ministerial Guidelines) to address this (see response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

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

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, THE DIET-RELATED RISK FACTORS FOR THEM AND FOOD SECURITY AND SUSTAINABILITY, as well as acute food safety concerns.”

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

No

Additional comments (optional):

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

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform “There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade.” We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated priority role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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

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

Positive

Additional comments (optional):

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

Component 2.1.2

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

Yes

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

Free text box, no character limit:

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

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

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that “the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives”. FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

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

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

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

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

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

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

Yes

Free text box, no character limit:

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

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes, food security and food sustainability cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews.

We strongly support a modified Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply;
- b) The environmental effects from the food supply; and
- c) Estimated benefit of change to the food supply (based on a) and b) above) from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as determined by the approach recommended by Dickie et al (1)
- 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, noting that the upcoming dietary guidelines are likely to consider sustainability impacts;
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease, i.e. ultra-processed foods and processed foods high in salt and added sugars;
- 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 (including costs associated with environmental issues, with climate change and biodiversity loss as key priorities);
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

It will also be important to educate existing staff within FSANZ who regularly make decisions regarding the definition of public health and, in particular, the ramifications of FSANZ decisions on longer term health, food security and sustainability. We have experience with our concerns often falling on deaf ears or being informed that these longer term impacts are not within FSANZ's remit.

(1) Dickie, S.; Woods, J.; Machado, P.; Lawrence, M. A novel food processing-based nutrition classification scheme for guiding policy actions applied to the Australian food supply. *Front. Nutr.* 2023, 10, 1071356

Component 2.2

Component 2.2.1

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

No

Free text box, no character limit:

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

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

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

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as a basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

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

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

Free text box, no character limit:

The Modified Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Test is the criterion; and then the risk framework should set out how the likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the 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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet a Modified Public Health Test.

- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies such as the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be only harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Modified Public Health Test (see response to the question in relation to other initiatives under component 2.1). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

It is unclear how this approach would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Modified Public Health Test.

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

No

Free text box, no character limit:

From the information provided, it appears that the minimal check pathway would only apply to applications and not proposals. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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

No

Free text box, no character limit:

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

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Modified Public Health Test. As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

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

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present.

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

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Modified Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Modified Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

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

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Modified Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

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

No

Free text box, no character limit:

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

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

There are also considerations of environmental aspects such a habitat damage, ecosystem disturbance and animal/plant population extinction if these foods were to be introduced commercially without appropriate regulatory support.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly.

Component 2.2.5

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

Yes

Free text box, no character limit:

We suggest the Modified Public Health Test is used to determine which reviews are undertaken and how they are prioritised.

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

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

Yes

Free text box, no character limit:

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

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

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

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

Component 2.2.6

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

In our opinion there are no matters that would have been better solved by a Code of Practice.

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:

N/A

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

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

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

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

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

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

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms.

This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon. Some examples:

- P1010 Review of Formulated Supplementary Sports Foods – commenced June 2019, consultation paper 2 completed Sept 2023, with no further timeline noted on FSANZ workplan.
- P1028 Infant Formula Products – commenced July 2013, numerous waiting periods between consultation periods and now final ministerial notification is for late June 2024.
- P1047 Review of regulatory nutrient reference values – Proposal prepared in August 2018 – and progress has been delayed due to other priorities.
- P1049 Carbohydrate and sugar claims on alcoholic beverages – commenced late August 2018 – proposed notification to ministers December 2024.
- P1056 Caffeine Review – commenced early June 2021 and end of consultation period March 2023 with no further dates for progress.

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

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

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

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

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

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

Positive

Free text box, no character limit:

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

Component 2.3.3

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

Positive

Free text box, no character limit:

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

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

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

Free text box, no character limit:

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

What 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:

N/A

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

Negative

Free text box, no character limit:

Compulsory fees would not result in a level playing field for all of industry and are likely to result in the risk of industry capture. Consumer and public health groups are also unlikely to be able to afford fees charged for progressing an application. Compulsory fees do not provide as secure a funding model as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovering services frequently represent a minority funding stream for standard-setters. This sort of activity will also likely negatively impact FSANZ's independence. Furthermore, it is also not 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:

N/A

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:

N/A

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:

N/A

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:

N/A

How would this need to be implemented to be successful?

Free text box, no character limit:

N/A

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

Other

Free text box, no character limit:

N/A

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:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1, so there is no need to change legislation to allow this.

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

Free text box, no character limit:

The Modified Public Health Test should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

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

Free text box, no character limit:

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

Component 2.4.2

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

No

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

Component 2.4.3

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

Yes

Free text box, no character limit:

We support this and strongly request that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

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

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact on public health nutrition, food security and sustainability outcomes. Data can help in identifying priorities, evidence-based development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed.

We recommend the development of 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
- Food composition
- Food sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Component 2.4.4

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

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

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

Component 2.4.5

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

Yes

Free text box, no character limit:

A Statement of Intent used to be a feature at the beginning of each food standard and it was helpful in understanding the reasoning for the Standard, and avoiding misinterpretations of the code. We would support the re-inclusion of statements of intent.

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:

No. The statement of intent should only relate to the FSANZ Priority Objectives - in relation to protection of public health and safety and to enable consumers to have sufficient information to make informed food choices.

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry, but where funding is scarce, this would be a lower priority.

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

Yes

Free text box, no character limit:

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

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

Component 2.4.7

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

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if this leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

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

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Yes

Free text box, no character limit:

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

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease, food security and food sustainability) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

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

Free text box, no character limit:

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

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

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

No

Free text box, no character limit:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section states that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease or effects on food security and sustainability throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health/environment, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system. Furthermore, costs to the environment should be considered, particularly any risks of increasing climate-related impacts or biodiversity loss, which would have implications for food security. These impacts need to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified. As noted in our responses above, we recommend that there is a time limit set for completion of proposals of 3 years.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit and offering consumers 'more choice' should not be considered a benefit if the food/product on offer is ultra-processed or otherwise is likely to contribute to diet related disease, poorer food security and an unsustainable food system.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that

amount articulated.

- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

No

Free text box, no character limit:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, so it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health/food security/sustainability should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health/sustainability impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

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

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health/sustainability – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health/sustainability, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

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

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

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

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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, safety and food sustainability.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is low (3). Furthermore, the food industry is a multi-billion dollar industry, capable of absorbing costs, compared with a publicly-funded healthcare sector which is overwhelmed and underfunded. The priority needs to clearly be in favour of protecting public health.

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

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

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

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. This is particularly true for Australia as climate impacts are likely to more severely impact our agricultural areas than some other parts of the globe. Not only could this increase the likelihood of food shortages and thus impact our nation's food security, but natural disasters are breeding grounds for disease, which could have direct impacts on human health, with the possibility of food as a vector. Finally, many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

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

FSANZ's role in the food supply

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

Representation of public health and consumer stakeholder voice

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

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

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

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

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

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 10:50:09

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Emma Shields

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Cancer Society of New Zealand

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

New Zealand

Other: :

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 Cancer Society is committed to reducing the incidence of cancer in Aotearoa New Zealand. It is well established that a healthy weight and diet are key to preventing many types of cancer (1,2). In 2019, it was estimated that almost 8% of all cancer deaths in Aotearoa New Zealand were due to unhealthy diet, and more than 6% were due to high Body Mass Index (BMI) (3). One in three adults live with obesity in New Zealand (4). New Zealand's food supply is dominated with highly processed foods harmful to health, making it hard for consumers to make a healthy choice (5).

In contrast to the above statistics on long term diet-related disease, New Zealanders are protected from short term food borne illness and the industry prospers due to the success of the food regulatory system. This is clearly acknowledged in the Executive Summary of the IA which states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity"

This is why we think that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases including cancer. This is the primary objective of FSANZ and this Review offers a significant opportunity to improve our food supply and better protect the long term health of New Zealanders. Therefore we think that a key policy problem that needs to be solved is that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health

and preventable diet-related disease such as cancer. Given this, the main purpose of this review should be to address what FSANZ's role, as a key player in the food regulatory system, is to address the failings of the food regulatory system.

However, the IA fails to mention this and the methodology used completely ignores this key policy problem. Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. While we think this is a necessary step, it is insufficient to deal with the actual policy problem. As a result, the IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related diseases such as cancer. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

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

We do not agree that Options 1 and 2 should be considered two independent options. Presenting Options 1 and Options 2 as polarised options creates an artificial distinction between them. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many reform elements presented by the IA as part of Option 2, are similarly available under Option 1. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

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

(1) Wild CP, Weiderpass E, Stewart BW, editors (2020). World Cancer Report: Cancer Research for Cancer Prevention. Lyon, France: International Agency for Research on Cancer. Available from: <http://publications.iarc.fr/586>. Licence: CC BY-NC-ND3.0 IGO.

(2) World Cancer Research Fund/American Institute for Cancer Research. Diet, Nutrition, Physical Activity and Cancer: A Global Perspective. Continuous Update Project Expert Report 2018. Available at dietandcancerreport.org

(3) 2019. GBD Results Tool –For all ages and sexes; risk factor mortality for all cancer (neoplasms), New Zealand. Institute for Health Metrics and Evaluation. URL: <http://ghdx.healthdata.org/gbd-resultstool?params=gbd-api-2019-permalink/2bf916c6c5fc6390404cc2bedf64add9>

(4) Ministry of Health. 2023. Annual Data Explorer 2022/23: New Zealand Health Survey [Data File]. URL: <https://minhealthnz.shinyapps.io/nz-health-survey-2022-23-annual-data-explorer/>

(5) Mackay, Sally; Ni Mhurchu, Cliona; Swinburn, Boyd; Eyles, Helen; Young, Leanne; Gontijo de Castro, Teresa (2019). State of the Food Supply New Zealand 2019. The University of Auckland. Online resource. <https://doi.org/10.17608/k6.auckland.9636710.v1>

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

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to “address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people” and “address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production”. The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

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

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

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

- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

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

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
 - food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),
- as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.
-

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

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

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

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not relate to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

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

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

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

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

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

We note though that while including a definition of public health and safety in the Act may address the issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health when developing food standards, this is not enough on its own. This change is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

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

No

Additional comments (optional):

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

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

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

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

Positive

Additional comments (optional):

Component 2.1.2

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

Yes

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

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. FSANZ do not need to undertake this exercise again when it is making its own determinations.

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

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

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations including those with commercial (those in s18(2)(a)-(d)).

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

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

I don't know.

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

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

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

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

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

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

Yes

Free text box, no character limit:

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

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes is embedded throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

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

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

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

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

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

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

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

I don't know.

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.
- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

It is unclear how this would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

If a program of harmonisation with international standards proceeds, standards should only be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. In practice this means food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

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

No

Free text box, no character limit:

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

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

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

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

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence provided in the IA that new pathways to amend food standards would apply to public health measures, rather it currently points to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

It appears that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

I don't know.

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

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

Free text box, no character limit:

Component 2.2.4

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

No

Free text box, no character limit:

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

We note that without meaningful consultation there is a real risk of the 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?

Prefer not to respond / I don't know

Free text box, no character limit:

I don't know.

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

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

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

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

Yes

Free text box, no character limit:

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

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

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

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

Component 2.2.6

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

No

Free text box, no character limit:

We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and Codes of Practice are non-binding and should only deal with matters of interpretation and application.

Furthermore, FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this.

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

Free text box, no character limit:

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and Codes of Practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system (1,2) and we do not support this.

(1) 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.

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

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

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

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

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

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

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board by ensuring that decisions that impact First Nations and Māori people are being made by members of their communities.

This amendment will aid the Board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

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

No

Free text box, no character limit:

As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

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

Positive

Free text box, no character limit:

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

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

Component 2.3.3

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

Positive

Free text box, no character limit:

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

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

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

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, to ensure a level playing field for industry. We support the top 5000 as suggested in the IA.

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

Free text box, no character limit:

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

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

I don't know.

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs and 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:

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

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings. This should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international

standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA under Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be much more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’. Is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns or a mixture of these things? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease like cancer) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We strongly recommend consultation with peak bodies for First Nations and Māori peoples with expertise in this area.

What are the current delay costs to industry?

Free text box, no character limit:

We do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits'. Is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns or a mixture of these things? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease like cancer) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented.

The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers. And given the burden of diet related non-communicable diseases grows annually, there also needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner'. This needs to be quantified. As noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost and benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. This approach presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo (e.g. they don't require amendments to the Act) and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support a negative impact rating of 3 (high) for policy problem 1.

Option 2 is given a rating of 3 for solving Policy Problem 1. We would argue that the rating should be 0 or 1 at best.

Option 2 is given a rating of 2.5 for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 for solving Policy Problem 3. We would argue that the rating should be 1.5-2.

Option 2 is given a rating of 2.5 for solving Policy Problem 4 and Option 1 is given a 0. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented. It is important that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.

- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.

- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.

- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups. We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not

agreed,
We support the risk rating for this risk.

Theme: efficient and effective operations
Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

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

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security .

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

We note further that the IA sets out clearly what the Act is designed to do, it is designed to:

- protect the public good by reducing foodborne illness and promoting population health:

The reforms in Option 2 of the IA do not enable FSANZ to protect the public good by promoting population health.

- address negative externalities, such as where the actions of some stakeholder groups create costs or harm for other people, within these costs being paid for by the responsible parties:

The reforms in Option 2 will perpetuate the negative externalities created by the actions of industry and resulting in costs and harms to consumers and governments - these costs will continue to be paid for by consumers and governments and not industry under the proposed reforms.

- address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production:

The reforms in Option 2 of the IA do not enable FSANZ to address information asymmetries any better than under Option 1.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

We were clear in feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives - to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on the FSANZ Act Review have been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 11:57:30

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Victoria Taylor

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Cellular Agriculture Australia

Which sector do you represent?

Food Industry

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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:

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Not Answered

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

No

Additional comments (optional):

FSANZ already considers short and long-term risks to health when developing food standards. Hazard and Risk Assessments include toxicology and dietary exposure assessments. Re-defining public health and safety may create expectations that FSANZ will move into the nutrition and preventative health space. This is not FSANZ's role. FSANZ must avoid any scope-creep that could dilute their focus and distort alignment with international standards, thereby adversely impacting trade.

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?

Yes

Additional comments (optional):

FSANZ' role is to manage a risk & evidence-based system designed to strike a balance between social (safety) and economic (trade) imperatives. Any change that requires assessments to consider public health (beyond existing requirements) will create a material impact. FSANZ needs to demonstrate how this fits within their remit. FSANZ will need to demonstrate how they propose to align this with existing government approaches to public health without duplicating existing activities further eroding efficient food safety regulation.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Negative

Additional comments (optional):

It depends on the definition used. Public health can cover dietary guidelines and healthy eating advice through to epidemiology and disease control. FSANZ must seek to promote a competitive and innovative food industry through rigorous food safety assessments, CAA is concerned that any definition beyond the current food safety requirements will create even greater uncertainty for applicants.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Not Answered

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Yes

Free text box, no character limit:

CAA strongly agrees that several FSANZ processes appear to be rules-based, rather than outcomes-based, so sees merit in introducing a risk-based framework. However, the proposed risk framework included in the consultation paper is quite limited. We would welcome the opportunity to contribute further in creating a framework that encompasses a wider scope. The focus on assessing risk in relation to a potential public health impact or health outcome, and then aligning regulatory actions to the risk level, is supported. This will ensure applicants are providing evidence and data central to food safety assessments, rather than additional data required under rules that may lack strong alignment to human health needs.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Not Answered

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Yes

Free text box, no character limit:

The regulation of foods made using cellular agriculture technologies (precision fermentation and cell cultivation) is currently being determined by safety assessments in a number of jurisdictions, including Australia-New Zealand, Canada, the United States, Singapore and Israel.

It is our understanding from discussions with relevant FSANZ representatives that a commitment exists to share information between jurisdictions, but there is merit in formalising such an arrangement. We note the consultation paper highlights that approximately half of all proposals and applications made to FSANZ each year relate to minor processing aid amendments, including substances approved in other international jurisdictions. This appears to be a highly inefficient use of FSANZ resources, and any opportunity to reduce duplication to enable FSANZ resources to be allocated to more compelling and complex issues would be supported.

CAA acknowledges the consultation paper's reference to the Therapeutic Goods Administration's (TGA) Comparable Overseas Regulator (COR) regime, which we believe provides a useful model. This could allow FSANZ to use assessments from CORs where possible, in assessing food safety applications, reducing the amount of time and cost for applicants. We agree that a COR must be sufficiently similar to FSANZ, with consistent standards to support collaborative work, and where formal MOUs have been signed to underpin work-sharing in clear, open and secure communications. CAA also supports the introduction of a minimal check pathway that would expedite approvals for products that have been approved by a COR.

As technology and regulatory science is moving quickly, CAA sees value in FSANZ undertaking an annual harmonisation process to consider adopting new standards into the Food Standards Code. CAA, therefore, supports the recommendation that the Act be amended to enable FSANZ to formally recognise and adopt the assessment and determinations of "overseas bodies." However, CAA does not recommend that FSANZ be compelled to accept assessments automatically and that Australia-New Zealand's particular interests must be served. This is particularly relevant to the cultivated meat sector, where some European Union members implemented bans on the production of these foods.

FSANZ must also be ready to respond publicly as to why a certain assessment approved by a COR was not, or will not be, accepted.

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Not Answered

Free text box, no character limit:

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Yes

Free text box, no character limit:

Such schemes (eg GRAS in the US) are in place globally and function without incident.

We understand FSANZ' current approach to colours and flavours is an example of such a minimal check pathway already operating. Therefore, CAA would support further minimal check pathways being introduced – including extending this to processing aids. We are not aware of any other regulator requiring full, pre-market assessment for processing aids.

Another efficient method for handling applications could be to create an annual omnibus proposal pathway and group like-substances into such in the same way that the annual MRL omnibus approach has functioned for some time.

CAA would also like to see greater risk-based scrutiny applied to the definition of “novel food.” As applications are assessed and the Code amended, how long should a product remain novel, requiring a specific individual application per product?

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:

CAA believes FSANZ should consider additional pathways to amend food Standards. Currently, scale-up cellular agriculture companies must submit an application in lieu of the Standards providing a clear pathway to approval. FSANZ makes recommendations for amendments to the Code at the same time as the assessment is undertaken. Small food companies are being asked to bear an enormous cost and risk in applying for an assessment where there is no certainty about their eligibility under existing Standards (a major procedure assessment for a novel food costs approximately \$200,000). When CAA has sought advice on seeking changes to the Code to support novel food companies in developing their application dossiers, the advice has been that changes will only be made on the basis of an application. While we appreciate the resource requirements for FSANZ to amend food Standards in anticipation of future applications are potentially high, all risk and cost is currently being borne by small food companies.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Not Answered

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Yes

Free text box, no character limit:

CAA supports the delegation of low-risk proposals from the Board to the CEO to create efficiencies. This should be subject to periodic stakeholder input and Ministerial oversight to ensure it functions as intended. We suggest that good governance would include a mechanism for the CEO to refer low-risk items to the Board in the event of an unexpected stakeholder or technical issue.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Not Answered

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Not Answered

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

CAA strongly agrees that regular standards reviews should be core business for FSANZ. It is assumed that FSANZ already has the capability to undertake the suggested monitoring, environmental scanning, consultation and data analysis to understand where revisions are required. It is a logical extension that this sectoral awareness is converted into action, providing a fit-for-purpose regulatory system.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Not Answered

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Yes

Free text box, no character limit:

CAA supports the use of Codes of Practice and guidelines to reduce the regulatory cost and overall burden on doing business. These should be developed with industry stakeholders and involve the enforcement agencies. Without the latter, they would lack effect and potentially exacerbate inconsistent implementation of the Code.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Not Answered

Free text box, no character limit:

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

CAA does not have a strong opinion on the composition of the FSANZ board but notes representative boards in a government context are inconsistent with contemporary governance principles. Independent directors recruited via external and transparent processes is likely more appropriate, and consistent with many other government boards.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Not Answered

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Negative

Free text box, no character limit:

This would have a major effect on food innovation. There is a relationship between the more efficient use of FSANZ resources and removing the option for expedited assessments. If the Act allows a more efficient approval process, for example, with the option to accept overseas assessments (particularly for minor processing aid amendments), then a corresponding decrease in assessment times should be the logical outcome. That said, the ability of a company to make a commercial decision to apply for an expedited assessment is an acceptable option in a user-pays environment.

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:

CAA does not support an industry-wide levy, as it will increase the burden on companies and stifle innovation, particularly for emerging technologies being pursued by pre-revenue start-up companies.

A more appropriate way to improve FSANZ resourcing is to increase government funding.

We note that comparable international bodies invest significantly more resources to support standard-setting. The Impact Analysis outlines the funding shortfall of Australia - New Zealand relative to other countries (noting some overseas regulators have a wider scope).

We submit that there must be a balance between funding FSANZ to ensure the integrity and rigour of our food safety system is maintained, and providing a cost-efficient regulatory system that encourages innovation and new applications.

Feedback to CAA from cellular agriculture companies (domestic and international) highlights the high cost of engaging with FSANZ, compared with the US and Singapore (who do not charge fees). Considering the relative size of the consumer markets in those three jurisdictions, current costs make Australia-NZ the least attractive market for new applicants.

On 4 April 2024, the Singapore Food Authority approved an application from Australian-based company Vow to sell their cultured quail in Singapore. In announcing the approval, Vow stated "We knew we wanted to launch our products into the Singaporean market first, not only because of the globally renowned culinary scene, but also because of the clear regulatory pathways and the ease of doing business."

Vow's paid application for FSANZ approval was submitted at the start of 2023, and has yet to progress to the second call for submissions, suggesting a two-year approval process. This is clearly inconsistent with a high-performing regulatory regime.

In this context, proposing a larger cost-shift on to industry would be unacceptable.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Not Answered

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Not Answered

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Not Answered

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Industry guidelines would be beneficial, particularly for the cellular agriculture sector, where businesses are in pre-revenue, start-up and scale-up phase and are unlikely to have a dedicated regulatory expert on staff. Providing information that allows company founders to understand the regulatory requirements may drive innovation while decreasing the amount of contact with FSANZ for basic, industry-specific information.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Not Answered

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 12:03:59

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Chelsea Hunnisett

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Planetary Health Equity Hothouse

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

[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 PHEH joins public health and consumer advocate colleagues in their concerns regarding the stated purpose of the Review. The Executive Summary of the Impact Analysis states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity". Given this, the main purpose of this review is unclear. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the Impact Analysis, resulting in the absence of its inclusion in the methodology.

The PHEH joins public health and consumer advocate colleagues in their concerns regarding the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation. The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the FSANZ Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This concern has been raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). This in addition to ongoing concerns being raised

regarding conflicts of interest in developing food regulation more broadly.

The current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step, it is insufficient to deal with the actual policy problem. As a result, the entire Impact Analysis fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this, the PHEH join public health and consumer advocate colleagues in proposing that a Public Health Test be incorporated into the Act (see refer to submissions by Food for Health Alliance, The George Institute for Global Health).

The PHEH join public health and consumer advocate colleagues in their concern regarding the presentation of Options 1 and 2. The Impact Analysis presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. The PHEH supports responses to this consultation that reflect this, noting that many reform elements presented by the Impact Analysis as part of Option 2, are similarly available under Option 1.

The PHEH joins public health and consumer advocate colleagues in concerns that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". To that end, it is crucial the Act includes responsibility for food systems security in the face of climate change via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system can play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement are fulfilled and can safeguard food security. A full review of food security needs should be undertaken; however, the initial work of the food regulatory system can occur via:

- Supporting consumers in sustainable food choices via labelling;
- Incorporating future warming scenarios into applications for food innovations (e.g. GM approvals);
- Incorporating mandatory food safety standards and monitoring during extreme weather events and for future warming scenarios; and,
- Consideration of evidence of harms from commercial determinants of poor nutrition and public health.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society, industry and commercial entities, and other government agencies and departments. Through the expansion of FSANZ's responsibility via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory need food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Not Answered

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Yes. This definition should consider a broad, systems approach to short- and long-term population health risks when developing food standards including food borne illnesses, food security and nutrition as a result of climate change and future warming scenarios. The remit of FSANZ, under the Act, should facilitate the food regulatory system to be able to respond to the climate crisis, and therefore have a broad definition in which to act.

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act. The inclusion of the definition clarifies categorically for external stakeholders FSANZ's role and will not change the requirement that they consider long-term health.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Not Answered

Additional comments (optional):

By clarifying the definition, FSANZ will have authority to proceed on evaluating regulation through a more holistic, systems-based approach to short- and long-term food security. The definition can also support Food Ministers to execute their responsibilities in a considered and future proofing paradigm, whereby food security throughout the life course is paramount. Food security should be understood as the availability of affordable, low carbon and healthy food products, and a thriving sustainable agriculture and food manufacturing system.

A global food crisis is looming — fuelled by conflict, climate impacts, water shortages, and the COVID-19 pandemic — which has resulted in rising prices of food, fuel, and fertilizer. Hundreds of millions of people around the world remain hungry and experience malnutrition or nutrient deficiencies. It has never been more important that FSANZ is equipped with an Act that facilitates public health needs and removes conflicts of interest within the regulatory system.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Not Answered

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Yes

Free text box, no character limit:

Yes. The PHEH joins public health and consumer advocate colleagues in calling for FSANZ to consult specifically with First Nations and Māori people and experts, and to be guided on possible provisions and language changes that are culturally appropriate and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of First Nations people in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Not Answered

Free text box, no character limit:

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Not Answered

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Not Answered

Free text box, no character limit:

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Not Answered

Free text box, no character limit:

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Not Answered

Free text box, no character limit:

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Not Answered

Free text box, no character limit:

What would be the impact of introducing new pathways to amend food standards for you?

Not Answered

Free text box, no character limit:

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Not Answered

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Not Answered

Free text box, no character limit:

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

What would be the impact of streamlining decision-making arrangements for you?

Not Answered

Free text box, no character limit:

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Not Answered

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Not Answered

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Not Answered

Free text box, no character limit:

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Not Answered

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Not Answered

Free text box, no character limit:

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Not Answered

Free text box, no character limit:

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Not Answered

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Not Answered

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Not Answered

Free text box, no character limit:

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Not Answered

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Not Answered

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Not Answered

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Not Answered

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

Free text box, no character limit:

To achieve FSANZ purpose of long-term health outcomes for all people living in Australia and New Zealand, the FSANZ Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the FSANZ Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand that have made international commitments to food security (see: UAE declaration on sustainable agriculture, resilient food systems, and climate action). Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Support for this approach was clearly outlined throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 12:22:14

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Public Health Agency, Ministry of Health New Zealand / Te Pou Hauora Tūmatanui, Manatū Hauora. Established on 1 July 2022, the Public Health Agency is a branded business unit within the Ministry. The Agency provides public health leadership across the health and disability system and influences the wider determinants of population health to enable people, their whānau and their environments to be healthy.

Which sector do you represent?

Government

Other: :

What country are you responding from?

New Zealand

Other: :

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 primary objective of protecting public health and safety is not reflected in the problems and subproblems analysed, and the analysis does not focus sufficiently on the long-term burden of disease from poor nutrition.

Some problems articulated mask other more pressing problems. For example:

- the subproblem on board composition ignores that an independent (from industry) public health voice is not guaranteed by the current s 116

- the subproblem on lack of a definition for 'public health' ignores the scope to strengthen public health in the Act, beyond merely including a definition of the term

- problem 2 does not consider that cost and time burdens experienced by consumers and governments if FSANZ does not undertake reviews and proposals in a timely manner.

The methodology provides 2 stark choices –status quo or enact a whole package of reforms. The analysis fails to explain to what extent changes could be

enacted under the status quo option, if at all. Also, more funding seems to be strongly aligned with option 2 and could also be a component of option 1 – enabling more funding to conduct functions with public health benefit.

There is little explanation of how the problems and subproblems were identified as the priority matters for consideration and insufficient information on the risk-based framework to provide fully informed comment in this submission.

The key assumptions underlying the cost/benefit model under the Net Benefit section on page 68 has a 7% per annum discount rate. This is very high for the base case and will mean that more distant costs and benefits have less impact than those occurring in the near future. This is tested in the Sensitivity Analysis, including with a 3% discount rate. The lower discount rate should have been used in the base case. That is the norm in health economics literature.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Yes.

Methodologies which:

- give more value to social determinants, the inter-related World Health Organization's Sustainable Development Goals (particularly goal 2 – zero hunger), healthy nutrition, mental health and the environment

- include food security and the food system's vulnerability to climate change, pandemics and the like through impact analysis

- better identify costs across the health system and the whole of government

- consider inequitable impacts on high need populations (ie, population groups experiencing poorer health outcomes), particularly, indigenous populations.

Evidence as follows:

Of relevance is population health data on the anticipated impacts of the proposals on the health status of New Zealanders, and the possible impact of heightening or reducing inequities in health status. This is relevant to strengthening the Act's primary objective of protecting public health and safety. Population health data/modelling on the anticipated impacts of the proposals on the health status of New Zealanders is missing, as is an analysis of the potential impacts to inequities in health status. Also, evidence in terms of mātauranga Māori (Māori knowledge) and community voices has not been considered.

Under Te Tiriti o Waitangi, the New Zealand Crown has responsibilities to consider te ao Māori /mātauranga Māori in food regulation in the current review of the FSANZ Act. This includes aligning the Act to improve hauora Māori (Māori health) outcomes and to strengthen mana motuhake for whānau - supporting them to have control of their own health and wellbeing. Additionally, there is a responsibility to consider hauora inter-generationally and across the individual and community life-course and to do what we can to ensure food regulation adopts a strong focus on public and population health. This is with the aims of taking preventive actions upstream to address health inequities/need among populations and of achieving better health outcomes for all.

Further, protecting indigenous people's right to health is the New Zealand government's responsibility under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Act's review should include consideration of indigenous frameworks and solutions proposed by Kaupapa Māori researchers which investigate the issue of body weight and dietary health for Māori, which can relate to food supply: Full article: Kōrero Mōmona, Kōrero ā-Hauora: a Kaupapa Māori and fat studies discussion of fatness, health and healthism (tandfonline.com)

Alternative intervention models exist which reflect Mātauranga Māori, for example, the Atua Matua Māori Health Framework, which provides a strengths-based alternative to weight-focused health promotion factors were responsible for an estimated 8.6% of health loss in New Zealand, through both disability and premature death. Diet-related metabolic risks, including high body mass index, high blood pressure and high fasting blood glucose were also among the 6 risk factors that made the greatest contribution to health loss: Longer, Healthier Lives: New Zealand's Health 1990–2017 | Ministry of Health NZ

The consultation document lacks consideration of the impact of food regulation on (diet-related) health loss and this is at odds with the primary objective of protecting public health and safety. There are significant costs to individuals, whānau, communities and governments associated with the increase and overall burden of diet-related non-communicable diseases and obesity. Collectively, unhealthy diets are the greatest contributor to the preventable health burden in New Zealand. High body mass index contributes 8.3% and other dietary risks contribute 8.6% of disability adjusted life-years (DALYs) lost. Combined, this is greater than the estimated 9.7% of health loss from tobacco use: Implementing healthy food environment policies in New Zealand: nine years of inaction | Health Research Policy and Systems | Full Text (biomedcentral.com)

Data from the New Zealand Health Survey 2022/23 shows New Zealand has the third highest adult obesity rate in the OECD: Annual Update of Key Results 2022/23: New Zealand Health Survey | Ministry of Health NZ

One in 3 adult New Zealanders (over 15 years) is classified as obese, as 5 years' ago, and around 1 in 8 children between the ages 2-14 years (12.5%). Obesity rates are higher for Māori and Pacific adults and children and for those living in high deprivation areas. These differences are unfair, and the Food Standards Code is an important lever to address the determinants of these inequities in health status.

In New Zealand, the direct health care cost of obesity is about \$2 billion a year and the indirect cost, such as loss of productivity, is between \$7 billion and \$9 billion a year, according to 2021 research by Sapere. They say that obesity related conditions account for about 18 per cent of all healthy life years lost: Economic-Impact-of-Excess-Weight-in-NZ-15-Nov-2021.pdf (hapai.co.nz)

In 2022 about 307,400, New Zealanders were estimated as having diabetes. About 307,400 people in NZ were estimated as having diabetes:

<https://www.tewhātuora.govt.nz/our-health-system/data-and-statistics/virtual-diabetes-tool/>

The lifetime cost of a 25-year-old developing type 2 diabetes is about \$565,000. Diabetes costs New Zealand about \$2 billion a year now, which is predicted to reach \$3.5 billion in the next 20 years.' Māori, Pacific and Asian people are likely to be worst affected: Microsoft Word - Diabetes New Zealand DRAFT report v0.42 - Executive Summary only.docx (healthierlives.co.nz)

Cardiovascular disease and ischaemic heart disease are very high ranked causes of death and disability for Māori, with dietary factors being amongst the most common risk factors. Cardiovascular disease mortality rate for Māori is twice as high compared to non-Māori. Cardiovascular disease 'is also expensive with an estimated annual cost to the health system of US\$2.3 billion (~ NZ\$3.3 billion).' Dietary risk factors are highly significant in terms of health loss: Prioritization of intervention domains to prevent cardiovascular disease: a country-level case study using global burden of disease and local data | Population Health Metrics | Full Text (biomedcentral.com)

Pacific people have high rates of multi-morbidities, connected to diet. By the age of 65 years, more than half of all Pacific peoples in New Zealand are living with diabetes. Death rates from heart disease and cancer are also significantly higher for Pacific compared to non-Māori non-Pacific people: Tofa Saili: A review of evidence about health equity for Pacific Peoples in New Zealand (nzdoctor.co.nz)

The impact of food regulation on health loss is not limited to obesity. Specific foods and nutrients contribute to New Zealand's burden of disease across the lifespan. There is, for example, compelling evidence that the consumption of processed red meat and red meat causes colorectal cancer. https://www.iarc.who.int/wp-content/uploads/2018/07/pr240_E.pdf

New Zealand has one of the highest rates of bowel cancer in the world: Bowel cancer symptoms & statistics - Bowel Cancer NZ . According to Bowel Cancer New Zealand, of the 1,200 Kiwis who die from bowel cancer every year. Twenty-two percent of Māori were diagnosed with bowel cancer in their 50's, compared to 12% for New Zealanders overall. Māori aged ≥ 25 years had significantly higher cancer registration rates with cancer mortality more than 1.5 times higher for Māori: Cancer web tool – Health New Zealand | Te Whatu Ora

In a study of 30,000 packaged foods and beverages in New Zealand supermarkets, researchers analysed the food and beverages by applying the Health Star Rating system, rating by level of processing and nutrient composition. Nearly three-fifths of these foods had a low Health Star Rating (<3.5), half were discretionary foods, and over two-thirds (69%) were highly processed. Yet, eating higher amounts of highly processed foods increases the risk of death and disease. <https://www.informas.org/state-of-the-food-supply/>

Ultra-processed food exposure and adverse health outcomes: umbrella review of epidemiological meta-analyses | The BMJ

Consumption of ultra-processed foods and risk of multimorbidity of cancer and cardiometabolic diseases: a multinational cohort study - The Lancet Regional Health – Europe

One in 2 5-year-olds have dental caries with sugar being a principal cause of decay. The cost of treating dental diseases in New Zealand is over \$1 billion per year. Nearly half of New Zealand adults (44%) experienced unmet need for dental care due to cost in the past 12 months:

<https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/oral-health-data-and-stats/age-5-and-year-8-oral-health-data-community-oral-health>

These are significant concerns, and they are heavily influenced by the food regulation system. Food composition, labelling and marketing standards are key levers for promoting a healthy food supply and can help address long-term public health challenges.

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:

Policy problem 1 – purpose and objectives of FSANZ are not clear

Subproblem 1 – Lack of definition for 'protecting public health and safety': The impact ratings (3) and overall rating of 9 overstate the significance of there being no definition in the Act for 'protecting public health and safety.' We consider an overall rating of 7 instead of 9 to be more accurate. As recognised in the IA, FSANZ does already take-into-account longer-term public health. Clarifying purpose and objectives is likely to be beneficial, but not significantly without other changes to strengthen the primary objective of protecting public health and safety.

However, we are concerned that there is confusion about how FSANZ should consider long-term risk to health when developing food standards and the impact of inaction is high. We are not confident that FSANZ is considering long-term risks to health sufficiently. At the July 2023 Food Ministers' Meeting, Food Ministers agreed to Strategic Outcomes for the Joint Food Regulation System which focus on food safety, healthy food supply, informed and empowered consumers and a thriving food economy. FSANZ must be positioned to support the outcomes pursued by the joint system. It is not clear what the process is for FSANZ to consider the impact of standards on the healthiness of the food supply:

<https://www.foodregulation.gov.au/activities-committees/food-ministers-meeting/communiques/food-ministers-meeting-communique-28-july-2023>

The unhealthy state of the food supply suggests that FSANZ does not consider the nutritional quality of general food items (except for special purpose foods, like infant formula and supplementary foods).

Therefore, we support greater certainty in the Act – clarifying inclusion of the long-term burden of chronic illness. This is also taking account of the fact that Ministerial guidelines issued by the FMM are not binding on FSANZ and are considered alongside 4 other factors, each of equal weighting in s 18(2). We propose a definition of 'public health' in this submission.

Subproblem 2 - Confusion about the factors to which FSANZ has given regard in its decision-making, and how this aligns with the objectives of the Act The ratings for this subproblem appear to be understating the problem – with an overall rating of 2. The confusion mentioned under subproblem 1 is in part a manifestation of subproblem 2, yet it has an overall rating of 9. This review is an opportunity to reinforce the Act's primary objective of protecting public health and safety, elaborate and build on the outcomes in s 18(2), and give greater priority to FMM guidance and recommendations.

Subproblem 3 – Lack of inclusion of Māori and First Nations peoples: The analysis understates the difficulties with lack of attention to the needs and commitments of government funded entities such as FSANZ to Māori. This is a serious deficiency in the Act impairing the regulatory system's ability to proactively partner with the indigenous peoples of our 2 countries. It also does not reflect the New Zealand Government's responsibilities under Te Tiriti o Waitangi. Nor does it meet our obligations under the Pae Ora (Healthy Futures) Act 2022 to improve health outcomes and address health need/ inequities for Māori and other priority populations. Words in legislation will need to be backed up with changes in FSANZ's governance and operations.

Policy problem 2 - legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

Subproblem 1- statutory processes are rules-based rather than outcomes based: The text under this subproblem does not align with the focus on outcomes in the heading. It instead suggests the current FMM processes for ratification of all applications and proposals are unnecessary, rigid and cumbersome. We recommend a stronger outcomes focus in the Act, separate from any consideration of ratification processes. We have made suggestions elsewhere in this submission to amplify and extend the outcomes in s 18, including within the risk matrix framework.

The current Ministerial ratification procedures are important to New Zealand's territorial sovereignty on food standards regulation. This is particularly considering there is no opportunity to debate individual changes to the Food Code in New Zealand's Parliament before adoption into domestic legislation. Therefore, there should be a cautious approach to any changes to the Act to avoid ratification. This is so that officials in FSANZ or Australian public servants are not the ones deciding what is incorporated into New Zealand's domestic food law. Also, any changes need to include guarantees that public health and safety are effectively assessed.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Yes, although it would be better to amend the definition in s 4 so it applies throughout the Act and strengthen the primary health objective of protecting public health and safety throughout the Act (at key function and decision points), rather than only concentrating on ss 3 and 18.

the wording of the definition (in s 4) and

the extent to which it is applies throughout the Act at key function and decision points.

The FMM 2013 definition proposed for incorporation in the Act does clarify that 'public health and safety' includes impact on, and contribution to, long term conditions as well as immediate safety and disease risks. It also signals the importance of preventing those conditions and doing so at the community and population levels. However, the FMM's definition narrows what 'public health' means. This is because it refers only to consumption (not also production, supply, access/affordability, marketing, sustainability, disposal and waste etc). The recently released New Zealand Office of the Auditor-General report into imported foods emphasizes:

'Managing food safety risks requires a robust food control system. International best practice indicates that it should be science- and risk-based and cover all aspects of the food chain. A prevention-based approach, where safety is part of the entire process (from food production to consumption), is most effective for reducing the risk of foodborne illness or injury.' (Emphasis added.) Monitoring importers of specified high-risk foods — Office of the Auditor-General New Zealand (oag.parliament.nz)

Therefore, the FMM's definition should not refer only to 'food consumption.' Instead, the definition should provide along-the-lines-of:

'Public health and safety in relation to food refers to all those aspects of food regulation under the Act 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 (and the diet related risk factors for them) as well as acute and cumulative food safety concerns. (Replacement words bolded.)

In addition, the definition of 'public health' could be in s 4 – the interpretation section – so that it applies consistently throughout the Act rather than only in ss 3 and 18.

The Review should have gone further than merely considering defining 'public health.' A real policy problem is that public health is in the Act to give international credence to our food system, yet it is being diluted by other considerations, and is insufficiently considered in the actual processes and decision points in the Act.

The following are among the multiple changes which we suggest for inclusion in the Act to strengthen its primary public health and safety objective. This is in addition to defining 'public health' in ss 3, 4 and/or 18(1):

Elaborate on protecting public health and safety in s 18(1) to specifically include: supporting good nutrition (ie, enable consumers to make food choices in line with national dietary guidelines) and reducing the burden of diet-related disease, particularly for Māori and First Nations peoples and other high need populations.

Require engagement with Māori and First Nations communities and partners.

Include specific public health and safety reporting obligations on the Authority in s 20 (Authority develops 3-year plan).

Amend s 116 to include at least one member who is an independent (from industry) public health expert – not public health or science and not a primarily industry person with some public health expertise.

Refer to public health outcomes in s 18(2) that the Authority must have regard to. One of these could include, 'have regard to any potential long-term health impacts of particular foods and food components at the population level or among particular populations.' Another could include 'have regard to

any current dietary guidelines of the governments of Australia and New Zealand.'

Include a new obligation to inform the FMM of how FSANZ has given effect to the primary objective of protecting public health and safety in the draft standards or variations it approves under s 34 and include these matters in its s 33 reports. The aim with this is to address FSANZ's current assumption that public health benefit attaches to all its work.

Sections 22-23 on industry preparing applications, their contents and process requirements, could place an onus on industry to demonstrate how they have taken-into-account the primary objective of protecting public health and safety in preparing the application.

Include independent (from industry) public health and consumer competency requirements in the Act for those who conduct the reviews. This is in part to prevent industry capture at this point in the process.

Ensure that the assessment of application requirements in the Act and Code require consideration of public health and safety rather than specifying it as an alternative among other considerations (eg, public health or safety; public health or science).

Require the Board when establishing committees to ensure they include independent (from industry) public health and safety expertise.

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):

Not significantly unless the definition is tied to other amendments throughout the Act (and Code) suggested above to strengthen protecting public health and safety. Also, there needs to be greater alignment between FSANZ's priorities, processes and decisions and:

Government policy on nutrition and dietary guidelines in both Australia and New Zealand
the need to involve other regulators and government agencies to gain traction on the social determinants of health – which includes nutrition.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Some of the confusion around the scope of 'public health and safety' will reduce. However, of far greater impact would be substantive amendments to the Act (and Code) to strengthen the protecting public health and safety objective.

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:

Given the current power in s 15 for Ministers to give policy directions, the obligation on FSANZ in s 18(2) to 'have regard to' Minister's guidelines along with the range of other factors in subs (2) seems too weak and could be strengthened. We recommend that s 18(2) should be amended so that prioritises Ministerial Policy Guidance to ensure FSANZ makes decisions in line with those guidelines before moving on to factors listed.

Information on how the Ministerial Policy Guidance has been complied with should be communicated in reporting to Ministers.

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:

More inclusive, culturally accessible and credible legislative language would be an improvement. Engagement, consultation and transparency with Māori communities and partners, including relationship building, should be required in deciding what the specific changes should be. This should involve accelerating tier 3 components (including co-design) on greater inclusion of Māori people.

Subject to the views of the affected groups, substantive content improvements could be made to the Act, recognising that Māori have distinct perspectives (te ao Māori), aspirations, and experiences to the population at large:

'Health risk factors have been predominantly framed through a non-Māori lens, which fails to recognise indigenous and Māori understandings of health which are generally broader, more holistic, embedded in collectivism and which acknowledge the importance of wairua (spirit) and te Taiao (environments).'

HNZ-TWO-Health-Status-Report_2023_reduced.pdf (tewhātuora.govt.nz)

The effects of colonisation, as a key determinant of health for indigenous people worldwide, need to be considered. This includes its impact on healthy behaviour and system challenges for Māori: Full article: Colonisation, hauora and whenua in Aotearoa (tandfonline.com); and Indigenous adaptation of a model for understanding the determinants of ethnic health inequities | Discover Social Science and Health (springer.com)

In 2011, the Waitangi Tribunal published its decision on the Wai 262 claim which considers the Crown's responsibilities to protect taonga (anything culturally prized/ treasures) and mātauranga, including about kai. We include a link for your reference, as the Tribunal's decision has implications for the current review: Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released | Waitangi Tribunal

It is not sufficient to put inclusive language in the Act. Also needed will be attitudinal and organisational changes to ensure, for example, that FSANZ appropriately safeguards Māori guardianship and data sovereignty interests (to the extent that this is within its powers)....

Other changes to the Act could include board composition requirements in s 116 and specific cultural competency requirements and amending s 18(2) to specify that there are cultural considerations the Authority must have regard to.

Furthermore, the FSANZ Act does not sufficiently take account of Pacific people's cultural perspectives. We attach this article on labelling processes failing to consider such perspectives, by way of illustration. Perceptions of New Zealand nutrition labels by Māori, Pacific and low-income shoppers - PubMed (nih.gov).

In addition, the research to date suggests a low use and resonance of food labelling contents among Māori, Pacific and high deprivation populations. The Act should provide for these perspectives, and include consultation with Pacific peoples as well as Māori. This is considering more than 8 percent of New Zealand's population identifies as of Pacific origin, and Pacific peoples' experiences of diet-related and socio-economic inequities.

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:

Māori should be asked to advise on what specific changes should be made to the Act to promote recognition of their culture and expertise. Subject to their views, potentially, the term 'traditional foods' could be replaced with 'indigenous foods.' Further, a specific pathway could be created for 'novel indigenous foods' (eg, indigenous foods that have been genetically modified). The category of these foods would need to be reviewed regularly in partnership with indigenous groups.

The legislation could put an expectation on the Board, board committees, the Authority, FRSC and Food Ministers to:

- have regard to the strength and nature of Māori and Australia First Nations' interests in the matters under their consideration
- regulate in a manner which is culturally safe and responsive to Māori and Australian First Nations' needs.

These obligations would be manifest through the way applications, variations, proposals, guidelines and codes of practice are developed and decided. This is instead of the suggestion in Tier 2 of the IA which considers changes to assessment proposals and applications only. We recommend a more comprehensive approach, embedding Māori and indigenous voices throughout FSANZ's processes and decision-making, including accelerating tier 3 components.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Under Te Tiriti o Waitangi, the New Zealand Crown has responsibilities to consider te ao Māori/Māori dimensions in food regulation. Therefore, we suggest the following changes:

- Elaborate on protecting public health and safety in s 18(1) to specifically include: supporting good nutrition and reducing the burden of disease, particularly for Māori This includes alignment with their aspirations for improving hauora Māori and their intergenerational health.
- Expressly provide for Māori and Australian First Nations' representation on the board in s 116 of the Act.
- Require specific reports to Ministers on protection of Māori, Australian First Nations public health and safety.
- Consider establishing new pathways for indigenous foods and novel indigenous foods, supported by accessible tikanga friendly guidance, written by Māori.

• Require meaningful engagement with Māori and Australian First Nations. FSANZ needs to build individual and organisational capability to engage with Māori. New Zealand public services resources are available to support this Te Tiriti o Waitangi Guidance for Policy Makers and the Māori Crown Relations Capability Framework for the Public Services. We note you have referenced a Canadian resource but not this New Zealand one 'much closer to home.': TA013.02-MCR-capability-framework-guide.pdf (tearawhiti.govt.nz)

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?

Prefer not to respond / I don't know

Free text box, no character limit:

There is insufficient detail in the IA on the risk-based framework to be certain of this. The lack of detail makes it difficult to assess whether improved public health outcomes will result from the proposed framework. For example, would the framework only apply to applications, given that proposals are likely to be high risk? Would it apply to guidelines and Codes of Practice as well as applications and variations? Is it inexorably linked to allowing the Board to delegate to senior officials, or can it operate without that change?

We request a separate consultation on the risk-based framework to ensure public health concerns are addressed.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

We have viewed the risk matrix and case scenario materials prepared by the Department of Health and Aged Care and the Canadian risk factors referred to in the IA itself. The former (included as an example) contains general prompting questions, such as:

Alignment with strategic priorities 1. Is the application/proposal a strategic priority (eg, for innovation, safety, health) as FMM?

Extent of risk 3. How significant is risk to public health or safety/how complex is the risk assessment?

These are relevant considerations, although not sufficiently targeted towards protecting public health and safety, particularly among diverse populations. Protecting public health and safety could be a criterion reflecting its status as the primary objective.

Also, 3. above asks about public health or safety in the alternative rather than as the 2 applicable ingredients of the primary objective. This use of the alternative should be removed from FSANZ's documents.

The general risk matrix framework should reflect the outcomes and factors in s 18 of the Act (eg, the need for standards to be based on risk analysis using the best available scientific evidence). This section also gives effect to the Joint Food Standards Treaty. This would newly include elaboration of protecting public health and safety and recognise Māori and other voices /perspectives and impacts.

Additional, practical factors which are likely to underly the choice of categorising the matter under consideration as low, medium or high risk include:

the degree of regulatory rigor is proportionate to the level of risk, bearing in mind the need to avoid undue compliance burden and efficient Code (etc) changes

the category chosen takes account of the need for credible, reliable assessments and our international reputation

cost neutral for consumers – rather than costs passed on by industry (note that in this regard FSANZ should explore what regulatory incentives and controls it can establish)

consistent with the Code standards

cumulative effect on the Code of making the change

degree of complexity – does assessment require technical, subject matter expertise? Is it likely to be controversial?

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:

Unsure. Without more detail this is hard to assess.

Categorisations of risk based on low, medium and high are by their nature simplistic and arbitrary. There are also risks of pro-industry unfounded assumptions and bias in risk categorisation – with industry applications largely being treated as low or medium risk and public health considerations classified as high risk and therefore not being applied to any new pathways to amend food standards.

Therefore, there needs to be clear checks and balances in place to give due weight to protecting public health and safety and other concerns. For example, this could include a requirement to evaluate and review resulting Code changes to check assumptions made during assessment and to identify unintended consequences. What the harmonisation process looks like and how public health and safety concerns are protected should be clearly stated.

Also, taking account of potential gaps in evidence, a category which recognises 'increased regulatory interest' - where there is some but not yet sufficient evidence of potential risks to human health – could be useful. In New Zealand, categorising a food as increased regulatory interest enables government to collect information to identify the need for any additional risk mitigation or management measures.

We request that you consult New Zealand and the other jurisdictions on the risk matrix framework's contents and that Food Ministers approve it. In-order-to give it visibility, it could be attached to the Act in a Schedule or in Regulations, or at least included on FSANZ's website.

Finally, consistent with the reference in the Australia-New Zealand Joint Food Treaty to 'systematic application of public health risk analysis and risk management principles to the development of food standards', we request that the work be done to identify and confirm this precise public health analysis and principles with public health stakeholders.

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:

FSANZ can do this now (s 112).

New Zealand recognises the equivalency of food safety control systems such as the United Kingdom, the European Union, Canada and the United States. However, local context, including indigenous and cultural perspectives, should supplement these risk assessments, particularly in the case of high-risk foods, novel foods, or foods of cultural significance to indigenous people.

Equivalent jurisdictions' risk assessments of initiatives of public health benefit could also be considered and fast-tracked for adoption.

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:

This question signals the wrong priority – efficiency and effectiveness – instead of the primary objective of protecting public health and safety.

The Joint System impacts our domestic food system levers for addressing domestic priorities as it replaces domestic food standards for composition and labelling, which means that the system needs to be responsive to New Zealand's specific context and interests.

We have a concern that automatic adoption of another jurisdiction's regulatory assessments could undermine Australian and New Zealand food sovereignty, and specifically attempts to be more responsive to First Nations, Māori and other New Zealand priority populations. It would not necessarily reflect the current contexts of Australian and New Zealand. For example, New Zealand's childhood obesity rates could be taken as indicating FSANZ should give more priority to preventing the long-term burden of disease by implementing more stringent standards on foods high in sugar, salt and saturated/trans fats marketed for infants and young children. New Zealand researchers have found that nearly 70% of the packaged food sold in our supermarkets meets the UPF classification and that we now consume about half our energy intake from these foods. Targeting ultra processed foods would make the biggest dent in obesity rates.

The legislative context of individual jurisdictions (eg, whether they have taxes or bans on ultra-processed foods elsewhere in their legislative databases), will influence whether they also address them in food standards' codes. For example, some countries may have sugar sweetened beverage taxes and ban ultra-processed foods in school and early child-care settings (as in Chile) - meaning their regulatory assessments are different to that of New Zealand's and Australia's. In other words, the approach in another jurisdiction is often not one that can automatically apply the same or similar effect to New Zealand and Australia.

Automatic adoption might also conflict with a more holistic assessment of the impact of an application, proposal or review on the Code as a whole.

Therefore, there should be an initial protecting public health and safety and holistic assessment check before adopting any jurisdiction's regulatory assessments.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. It may if the risk criteria and its application are robust, but improving efficiency and effectiveness is not the Act's primary objective.

Also, most public health benefit is likely to arise from proposals and reviews, not applications. In terms of a framework for reducing time spent on applications, what guarantees are there that savings/resources from a more efficient and effective applications framework will apply to proposals and holistic reviews of standards? Can this be legislated for?

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. Without more information, we have concerns that it may introduce more regulatory complexity overall and more opportunities to by-pass public health and safety risk assessments and public consultation - especially with Māori.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

Without more information, such as on checks and balances, we have concerns that it may introduce more regulatory complexity overall and more opportunities to by-pass public health and safety assessments.

Further, Appendix D suggests that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health; and where are the guarantees that any efficiencies will be redirected to processing public health proposals, evaluations and reviews?

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

New pathways should only be explored /created if they uphold the primary objective of protecting public health and safety.

Subject to the views of Māori and First Nations peoples, as well as an indigenous foods pathway for traditional foods, a novel indigenous foods pathway could be created such as for genetically modified indigenous foods. These pathways should take account of: Mātauranga and tikanga relating to handling and treatment of kai, which will vary according to iwi (tribe), hapū (descendant groups) and whānau (families). They should also take account of data sovereignty implications and kaitiaki (guardianship) interests in some Māori foods.

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:

Flexibility and efficiency are not the only considerations. The appropriate accountability level for FSANZ decisions and functions and the requisite competencies of decision-makers are key considerations. In this regard, there is insufficient detail provided on the interplay between the risk matrix and greater delegation.

In terms of ensuring flexibility and efficiency, s 112 of the Act already allows FSANZ to not do certain things in relation to an application or proposal (ss 22 and 55) if another government agency has already done them. In other words, it can rely on the work of other government agencies in some cases, subject to public notice. The Board can also establish committees to do a lot of its work (s 118).

Extending Board delegation powers is not the only means to achieve efficiencies, and delegation does not necessarily guarantee efficiencies in any case. The Board can by resolution already delegate many of its functions to a senior member of FSANZ staff (s 150(1)). However, the functions it cannot delegate and the functions the CEO (who is on the Board) cannot exercise under Board delegation (s 129) are key to demarcating what the Board's role is. (These limits align with the Board's Charter and the Public Governance, Performance and Accountability Act 2013 to which FSANZ is subject.)

Section 116 goes into some detail to specify the various competencies of board members – including public health expertise. These competencies could be side-lined by the Board delegating to the CEO or another senior official of FSANZ.

Further, a single official's decisions are less open to debate and scrutiny than those of the multidisciplinary Board. Transparency of decision-making at the right level of accountability – the Board - is important.

In the case of the CEO, they can subdelegate to any staff member of FSANZ (s 130), so quite important decisions would risk being decided at a less senior level in a less collaborative way.

Also, we are concerned that the voices of the 3 board members nominated by NZ, and new Māori and First Nations representatives, could be bypassed through delegation to an Australian official – which would appear to be a move away from a truly joint food regulatory system.

We also have reservations about FMM's delegating more of their functions to Australian departmental officials. The Food Safety Minister represents New

Zealand among the FMM. Australian department officials do not represent New Zealand.

Even seemingly minor and technical details of food regulation can have political or strategic implications. Therefore, it would not necessarily be a simple matter to authorise delegation of only minor and technical decisions to officials.

The FMM's approval function is one which needs to remain with the Ministers, because that is the means through which to protect New Zealand's territorial sovereignty. Only on approval, and Gazette notification, are Code changes incorporated into our domestic law.

Ministerial powers to give directions to FSANZ under s 15 as to how FSANZ conducts its powers should not be delegated to departmental officials, nor should its powers to request a review under s 113.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

Some of the same considerations, discussed under the questions relating to the risk matrix framework, also seem relevant here. In addition, the following are particularly relevant:

that decision-makers are competent and representative – able to make decisions which are safe, promoting health – particularly among high priority populations, culturally responsive, ethical and avoiding industry capture

the ability to assess the impact on the Code content and the Code overall – the Board should have the expertise and overall strategic view, compared to a single CEO or senior employee

that the Board is accountable for its decision to FMM, industry, consumers and the public at large.

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:

Unsure. There is insufficient explanation of how streamlining decision-making would protect public health and safety (if it would).

It would be encouraging if time and resources are allocated increasingly to proposals and holistic reviews where there is likely to be more public health benefit. There is no guarantee of this in the current review proposals, however.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Whether the proposed delegate has the requisite subject matter expertise, strategic overview, cultural and population health level perspectives. Also, whether they are appropriately accountable / at the correct level of accountability and whether there are checks and balances against bias, conflicts of interest, and sub-delegation.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

Not a one-off investment. FSANZ would need to partner with Māori to prepare this list, to be regularly reviewed, and prepare guidance material by or with, and for Māori to ensure the 'traditional' food pathway in the Code is accessible. FSANZ should consult more broadly with Māori and First Nations' peoples on what they want from the food regulatory system. Rather than a one-off investment, it would be better to building a standing/collaborative partnership with indigenous groups, considering how this knowledge is captured and disseminated back to communities in mana-enhancing and culturally appropriate ways. This is also taking account of taonga status of some kai (eg, freshwater eels, crayfish and mussels), which will require cultural expertise and tikanga guidance.

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?

Yes

Free text box, no character limit:

It might make FSANZ's processes more accessible to Māori and other indigenous food businesses. Māori must be involved in assessing the case for such guidance, and in its development.

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:

More holistic reviews would enable better assessment of the effects across the Code, not just of single ingredients added to one standard. Regular reviews would help assess the effectiveness of aspects of the Code and enable learnings to be applied to future Code applications and proposals. Standard reviews should be subject to a statutory timeframe for completion. The primary objective of protecting public health and safety should be applied in prioritising the content of reviews. We support the current timeframe/preference given to FMM requested reviews.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

FSANZ could use more bundling together of complementary policies and food categories in terms of Code changes and guidance. This would have the added benefit of enhancing efficiency and cohesion.

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:

The IA suggests that use of non-binding guidelines approved by FSANZ Board, but not ratified by FMM, would be a feasible alternative in some cases to applications, resulting in standards approved by the Board and approved by Ministers. However, we would be concerned from a jurisdictional sovereignty perspective if guidelines enable deliberate by-passing of FMM policy guidance and ratification. (New Zealand has only 3 members on FSANZ's Board). Further, greater resort to non-binding guidance and Codes of Practice in place of application processes could weaken existing requirements to protect public health and safety. So, there would need to be checks and balances to address these concerns.

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:

Matters of interpretation and application.

Where innovation is in its initial stages, industry, consumers and the public health sector may benefit from FSANZ publishing guidelines/guidance on things like whether there is any application of generative AI in the food system, what are the risks and how they can be addressed.

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:

The development of any Codes of Practice and guidelines should align with the risk framework (incorporating public health and safety considerations) and avoid conflicting with, by-passing or undermining the framework.

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:

Public health and safety would not be protected, in breach of the Act's primary objective.

If developed by industry there is the likelihood of self-serving misapplication, and work arounds of the Code's standard. Industry self-regulation does not work effectively to reduce unhealthy food production and consumption and in the longer term prevent the burden of disease linked to them. For example:

- the industry self-regulatory marketing codes for alcohol and other foods are voluntary codes in New Zealand. They are not enforceable and rely on consumers to navigate jurisdictional limits to have their complaints heard, often some-time after the marketing campaign has finished

- If Health Star Rating labels were mandatory, then New Zealand consumers would know that nearly three-fifths of packaged foods on our supermarket shelves have a low Health Star Rating (<3.5). Using other classifications, half of these packaged foods are discretionary and over two-thirds (69%) are ultra-processed: <https://www.informas.org/state-of-the-food-supply/>

- Australian and New Zealand State of the Food Supply reports provide evidence that voluntary industry-led initiatives have limited efficacy and reach within a joint system that is underpinned by harmonised food regulation.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

There is potential to design better review processes, so that the Board is aware earlier of the views of FMMS, rather than the latter communicating review decisions after 60 days have elapsed.

There should be a statutory timeframe for standard reviews and for completing proposals.

There should be reviews looking holistically at the Code.

The expedited applications process, dependent on the industry applicant paying a fee for preferential treatment, should be deleted from the Act.

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:

Although, governance skills (eg, finance, legal, strategic) are inherently important to most Boards selection of members, so we disagree with cluttering the Act with these. If expressly included they could detract from subject matter competencies, including those of public health, culture, indigenous voice and consumer voice.

We would prefer to see a statutory requirement that at least one public health representative, distinct from industry and science expert representation, will be included on the Board. In practice, desirable competencies are public health nutrition and public health epidemiology expertise.

We doubt also that there is a simple or correct choice between Board (strategic) and officials (technical) since the board is accountable for all the Authority's functions, as reflected in its statutory compositional requirements.

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:

Independent public health expertise, and indigenous (and other populations') perspectives and expertise about their culture and food, should be represented and reflected in s 116. We consider there are more risks of conflicts of interest and industry over-representation with an open market process.

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:

It would remove an implication that, by paying, a business can get preferential treatment. Maintaining a level playing field among industry players is important. Removing the option to fast-track applications could also support more robust risk matrix framework considerations. The option to expedite could become a best endeavours obligation to expedite all applications as soon as reasonably practicable.

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:

The Code is very much to the benefit of industry, and they should expect to pay more towards funding FSANZ, so we support an industry-wide levy.

However, there may be no direct, positive impact on public health unless there are legislative commitments to apply a fair proportion of the levies received to the primary objective of protecting public health and safety.

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:

Specify in the Act the authority to cost recover and the cost recovery principles so that they are transparent and impose consultation with stakeholder requirements. In New Zealand, Treasury's 2017 guidance specifies principles which are still current: Guidelines for Setting Charges in the Public Sector | The Treasury New Zealand. In large part they were adopted in s 343 of the Therapeutic Products Act 2023: Therapeutic Products Act 2023 No 37, Public Act 343 Principles for cost recovery – New Zealand Legislation

The levy rates could also factor in that industry does not currently pay the costs of publicly funded health care arising from unregulated access to cheap, unhealthy food and drinks. The levy rate could include a percentage of the total fee for this.

More complex or sizeable applications that require more resource could attract a levy at a higher rate and/or sizeable business applicants could pay more than smaller businesses. Applications for only minor or technical corrections could attract a nominal fee.

Consideration should be given to industry applicants paying substantially more towards the costs of FSANZ conducting its functions (than the current approximately 10%), given industry substantially benefits (including reputationally from public health and safety components to FSANZ work). New Zealand's Medsafe is not a joint country agency which is predominantly government funded, the Therapeutic Products Act 2023 provides a regulatory model which requires industry to pay more. Section 342 says that the Regulator, chief executive and the Minister must take all reasonable steps to ensure the costs of administering the Act are not from Parliamentary appropriation and are met by way of fees, levies or otherwise. The costs of administering the Act are direct and indirect costs incurred or reasonably expected to be incurred by the Regulator in performing their functions under the Act.

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:

No response.

What would be the expected impact of compulsory fees for all applications?

Neutral

Free text box, no character limit:

There may be a stronger onus on the Authority to demonstrate through their processes that the fees are fair and proportionate and reflect their reasonable expenses.

Compulsory fees may be a barrier to Kaupapa Māori business, and to small, but innovative businesses.

There should be no message that industry applicants get preferential treatment for accelerated applications by paying more or for paying a levy.

FSANZ would have more funding and could ideally focus more on functions with public health benefit (eg, proposals, reviews (including holistic), and evaluating whether the Code changes meet s 18's outcomes).

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:

It is not FSANZ's statutory role to assist with entrepreneurial activities (see s 13). To undertake such activities may lead to regulatory capture. Also, FSANZ has limited resources to achieve s 18 outcomes, so caution should be applied to additional revenue generating activities that may distract from this.

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

There should be statutory levy principles and an obligation to consult with the jurisdictions and industry prior to levy setting or changes. Whatever the principles and criteria, they should avoid the overt or implicit message to industry that it gets preferential treatment for paying a levy.

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?

No

Free text box, no character limit:

FSANZ is mostly government funded (and funded by Australian and New Zealand taxpayers). FSANZ's statutory responsibilities, like the primary objective of protecting public health and safety, should not become so overtly dependent on resourcing on an ad hoc basis.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Negative

Free text box, no character limit:

As industry (not the jurisdictions) is primarily responsible for Code non-compliance, it would not be fair to impose a food recall coordination levy on enforcement jurisdictions. FSANZ could apply a food industry levy to recover the reasonable costs of coordinating a food recall. More complex or sizeable food recalls (using more resources) could attract a higher levy than minor or small-scale food recalls.

How would this need to be implemented to be successful?

Free text box, no character limit:

No response.

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

Unsure. While a levy per recall may be fairer, and incentivise industry compliance with the Code, it may be more costly to administer than an automatic annual levy across the board.

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:

This may disincentivise jurisdictions at the expense of consideration of important /novel proposals, including those that benefit public health and safety.

How would this need to be implemented to be successful?

Free text box, no character limit:

Timely completion of proposals would allow new proposals to be added and existing proposals to be prioritised. There should be transparent criteria that the Board can apply to assess what should be added to the workplan via jurisdictions' proposals.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Yes

Free text box, no character limit:

A new provision could be inserted in the Act regulating the period within which proposals for standards or variations must be completed (as for s 109 for applications). Three years appears to be a reasonable completion time.

There have been instances of major obstruction in changing the Code (eg, the length of time to get pregnancy warning labels). Consideration should be given to including an obstruction offence in the Act and the opportunity to additionally levy people who interfere unduly in FSANZ conducting its statutory functions.

A levy could support nutrition surveys in Australia and New Zealand.

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:

Yes, although to some extent this already occurs. Done well, it could facilitate more effective planning and joint understanding of resourcing pressures, the implications of taking on items of work, and of burgeoning risks and opportunities. However, the FMM can direct FSANZ (under s 15) in exercising FSANZ's powers, so 'joint' agenda setting should not detract from that power to direct and the implicit Ministerial levers behind it.

To be successful, a protecting public health and safety test could be applied and this would not be a test applied only either to public health or to safety or public safety.

Include public health and indigenous subject matter experts' input and weightings to value these things highly.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

Those outcomes and factors in s 18, together with the additions suggested in this submission.

Some of our concerns include:

- addressing the burden of disease, due to poor diet and overweight
- providing effective and timely consumer safety protections
- enabling consumers to make food choices which are healthy
- protecting children
- identifying and mitigating inequitable impacts between populations, particularly inequities experienced by Māori/First Nations peoples and capturing indigenous understanding of risk and benefit which are framed through te ao me ōnaā tikanga Māori (the language and its cultural practices) (eg, the demonstrated harm to Māori New Zealanders of consuming highly processed foods included in the Code)
- contributing to healthy food environments, such as adopting a strong focus on restricting marketing of alcohol, foods high in sugar, salt and saturated/trans fats and ultra-processed foods, particularly to children
- avoiding industry capture and undue influence.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

FSANZ must give effect to FMM directions (s 15) in conducting their functions under the Act. In the New Zealand context, Crown agent Crown entities must give effect to Ministerial policy directions and, in practice, even in the absence of a formal direction, this is interpreted to mean they must more generally act in accordance with government policy in conducting their statutory functions and comply with the Minister's 'no surprises' expectations.

FMM could issue an annual letter of expectations to FSANZ.

FSANZ could better explain how it gives effect to the FMM's directions, requests and policy guidance. This could be in the annual report, for example.

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:

Noting that FSANZ already attends the FRSC policy development working group meetings.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

More funding for FSANZ's statutory responsibilities.

Identify priorities in common, and not shared, as early as possible.

Early joint agenda setting.

A FMM letter of expectations to FSANZ annually.

A requirement on FSANZ to explain how it has adopted FMM policy guidance and requests.

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:

The proposal only applies to Australia. However, reciprocal sharing information FSANZ collates from others of the Australian jurisdictions would benefit New Zealand and those jurisdictions as well. This would be subject to data sovereignty, privacy and official information law constraints.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Data on the adverse health outcomes resulting from consumption of certain foods or ingredients and the availability of these in the food supply (eg, ultra-processed foods).

Data on food supply (including sales data) and composition.

Data on how standards are interpreted, applied and enforced in the context of individual jurisdictions' food legislation.

Data on the impact of food regulation on nutrition outcomes (including on the burden of disease), metabolic risk factors, and diet-related health outcomes at a population level data and among First Nations/Māori and other populations in need. For example, information that show what is the contributing or potential or actual preventive effect of Code changes on these poor health outcomes for Māori.

Cultural perspectives data, including practicing research methodologies which prioritise indigenous world view (eg, Kaupapa Māori methods / Māori customary practice).

Data on the impact of the standards and Code on the aims/outcomes in s 18(1), which would include a long-term public health focus as well as a focus on the standards specifically.

The COVID-19 pandemic has shown the importance of using epidemiological evidence as a foundation for a public health response. This also applies to obesity and unhealthy diets: Implementing healthy food environment policies in New Zealand: nine years of inaction | Health Research Policy and Systems | Full Text (biomedcentral.com)

Nutritional epidemiology data. There is an ongoing need for scientifically robust, nutrition survey data, especially as detailed New Zealand specific food consumption data has not been collected for 15 years.

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:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Supporting the development of the Food Standards Code.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure. We need more information. In New Zealand, the term 'Statement of intent' refers to ex ante planning by departments and Crown entities – with a mostly financial focus. If this term is meant to be an explanatory note, like the note Parliamentary Counsel provides with bills introduced to the House,

this could be useful.

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 could potentially be of wider use to provide consistent, plain English explanations changes to standards for industry, consumers, Ministers and jurisdictions.

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:

Unsure.

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:

Along with other changes to be more responsive to indigenous cultures. However, indigenous people should be commissioned to write or co-develop the guidelines.

Please refer to this link on consultation with Māori: [Te Arawhiti - Crown engagement with Māori](#)

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, while respecting domestic law boundaries. Collaboration in the form of interpretative information and acting as a conduit to share the jurisdictions' enforcement experiences and ways around enforcement challenges could be useful. It could also be useful to achieve improved public health and safety outcomes.

Section 13(1)(c) already provides that one of the Authority's functions is to 'develop guidelines to assist the interpretation of the Australia New Zealand Food Standards Code on its own initiative or in consultation with the States, the Territories and any other body or person that the Authority considers appropriate.' The paragraph could include 'enforcement.'

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Yes

Free text box, no character limit:

A legislative explanatory memorandum or note for each food standard change would both guide stakeholders and inform enforcement activities. This was raised at one of the stakeholder workshops in February 2024.

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:

The costs to FSANZ, Ministers and governments from industry obstruction of changes to the Food Standards Code which protect public health and safety. The discussion instead seems most concerned with costs to industry of delay.

Also, qualified benefits only refer to 'public confidence in the provision of safe food'. This ignores the outcomes in s 18(1) of the Act – specifically protecting public health as well as safety. There needs to be more clarity on what is meant by 'public health benefit.' Both short and long-term public health and safety should be considered.

Governments of Australia and New Zealand are stakeholders, but the assessment only applies to the food regulation system. Not considered are externalities - such as impact on health loss (details in Section 3), the impact on the health system, and the impact on other regulator's systems (eg, environmental and other systems administering social determinants of health).

The consideration of consumers is light (eg, it does not sufficiently identify effects on high need populations most affected by high fat, salt sugar and ultra-processed foods). In particular, the analysis should have identified the disproportionate effect of unhealthy foods on First Nations/Māori, Pacific, those living in high deprivation areas and other high need populations.

The analysis does identify that industry is likely to pass on regulatory costs to consumers. The risks to population health of unaffordable healthy foods should be seriously considered, and what measures could be adopted to alleviate industry passing on its costs via healthy, 'every day' foods. Cost recovery from 'discretionary foods', especially those with a Health Star Rating of <3.5, is preferable.

Further, the food supply in New Zealand is not supporting consumer choices that are consistent with healthy diets and good nutrition. When the Health Star Rating System was introduced 10 years ago, it promised to inform consumers of healthier food choices. However, only one-third (36%) of intended products have this front-of-pack label in Australia (the New Zealand results have yet to be published), and it is preferentially applied to healthier food categories. Also, nutritious foods need to be available, affordable and desirable:

<https://www.georgeinstitute.org/media-releases/food-industry-failing-to-meet-governments-health-star-rating-targets#no-back>

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

Māori need to speak to this, through engagement and questions, and Ministry for Primary Industries (MPI). However, please refer to the Wai 262 claim for cultural context: Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released | Waitangi Tribunal

While this decision was released in 2011, the perspectives discussed are still relevant and identifies the need to:

'Address IP issues related to indigenous flora and fauna Māori IP and data is protected, including through counterfeit monitoring, strengthened plant variety rights and clarification on bioprospecting policy.'

The future of Aotearoa New Zealand's food sector: Exploring demand opportunities in the year 2050 (mpi.govt.nz)

What are the current delay costs to industry?

Free text box, no character limit:

The IA refers to delay costs to industry in the application process due to inefficiencies. The analysis also assumes delay costs to industry from timing of the proposals but the IA does not adequately explain these.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Yes

Free text box, no character limit:

From a public health perspective, the state of the food supply in New Zealand is concerning. Key findings we draw to your attention in this regard are in 2 reports:

• 2023 State of the Food Supply Report: A Five-year Review (The George Institute): Food industry failing to meet Government's Health Star Rating targets | The George Institute for Global Health

• State of the Food Supply: New Zealand 2019 (INFORMAS): State of the Food Supply New Zealand 2019 | INFORMAS.

Further, as the 2022/23 New Zealand Health Survey results show, Māori and Pacific people experience the disproportionate burdens of diet-related disease, disability, mortality, and morbidity compared to non-Māori/ non-Pacific peoples. This leads to greater government healthcare costs and increasing/compounding inequities. At least one in 3 Māori and Pacific children live in households where food runs out. Few New Zealanders adhere to healthy eating advice and malnutrition is present: Food Hardship and Early Childhood Nutrition Report (msd.govt.nz)

The health, social and economic consequences of limited access to nutritious, affordable kai, and too much access to cheap, unhealthy food and drinks, are very significant. High body mass index and dietary risks are responsible for 17.5% of health loss in New Zealand, and together they make the largest contribution out of all the risk factors to the life expectancy gap for Māori and Pacific peoples. The direct healthcare costs of treating diseases attributed to high body mass index are estimated to be \$2 billion per year, or about 8% of the Vote Health budget, with indirect costs estimated to be a further \$4 to \$9 billion dollars, equivalent to \$2,000 per New Zealander per year:

<https://hapai.co.nz/sites/default/files/Economic-impact-of-Excess-Weight-in-NZ-15-Nov-2021.pdf>

In addition, the cost of treating dental diseases in New Zealand is over \$1 billion per year:

https://cdn.who.int/media/docs/default-source/country-profiles/oral-health/oral-health-nzl-2022-country-profile.pdf?sfvrsn=485f343f_7&download=true

Costs and benefits according to Māori people are likely to be approached holistically, taking account of costs to te taiao (environment), whānau (social), climate and other wider determinants.

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

An assumption made for both Option 1 and 2 is that 'Public health benefits derived from one standard have been quantified to be AUD \$1.33 million (NZD \$1.42 million) per annum using nutrition labelling as a proxy for the public health benefits of food regulation.' The assumption is this will grow by the average population growth rate of 0.76% per annum. Nutrition labelling is not an effective proxy for the Code as a whole, which largely benefits industry. The analysis does not sufficiently consider health and economic costs (including downstream) to governments, consumers and communities of unhealthy or unsafe foods due to ineffective regulation.

Public health will benefit from stronger upstream food regulation to prevent tooth decay, non-communicable diseases, and long-term conditions, particularly among high need populations and to reduce the burden on the health sector. This will also have the benefits of increased productivity and increased quality and length of life. In effect this means prioritising nutritional needs of children, and FSANZ focusing more on food marketing (eg, restrictions on unhealthy food marketing, particularly to children, to change what people eat). It also means more effective front-of-pack nutritional guidance, including warning labelling which resonates with a broader cross-section of society. To protect public health, FSANZ could also promote a move away from wasteful, expensive foods, public food procurement that incentivises healthy options and disincentivises unhealthy foods, and food reformulation to meet nutritional targets. Aspects of these things are within FSANZ's ambit of responsibility.

There is detail about administrative costs, and much less about the big aggregates (eg, the impact of an outbreak). It is unclear why this approach has been taken.

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:

There is no consideration of the costs of delay caused by industry in progressing proposals of public health benefit (eg, 10+ years to get pregnancy warning labels). There is an excessive cost to the public if proposals take a long time to process.

As with Option 1, the analysis needs a greater focus on public health, consumers, other regulators, and high need populations. It also needs a greater focus on outcomes, including s 18 aims.

The analysis recognises the risk of low-risk pathways leading to more unsafe foods entering the market, posing to a risk to public health and safety. However, it insufficiently considers the costs to the health system, and other regulatory, systems if public health benefit is not clearly articulated and embedded in food regulation. The analysis should have been clearer about its non-inclusion of the wider health and other impacts.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

Free text box, no character limit:

New Zealand health data provided for Option 1 is also likely to apply to Option 2, unless FSANZ systems significantly change to protect public health with a renewed focus on preventing non-communicable diseases.

Youth activist data from the United Kingdom such as this: [WEBSITE_Bite_Back_Manufacturers__high_res.pdf](#) (contentfiles.net)

Data on the global health, productivity and environmental cost of diets high in fats, sugar, salt and ultra-processed foods follows:

Food System Economics Commission (FSEC):

'The global adoption of diets high in fats, sugar, salt and ultra-processed foods would increase the number of obese people worldwide by 70 percent to an estimated 1.5 billion in 2050, or 15 percent of the expected global population. Note that the direct medical costs of treating the health consequences of overweight and obesity have been estimated by others to rise from 600 billion USD today to almost 3 trillion by 2030 already.'

[FSEC-Global_Policy_Report.pdf](#) (foodsystemeconomics.org)

'Health costs, which FSEC estimates to be at least 11 trillion USD. The economic costs of ill health due to food systems are measured through their negative effects on labour productivity. Those are driven by the prevalence of non-communicable diseases, including diabetes, hypertension, and cancer which can be attributed to food. A large share of this burden is born by people living with obesity, currently estimated at 770 million people. FSEC's health costs also include a lower bound figure for the productivity costs of undernutrition, currently affecting 735 million people.'

EAT-Lancet Commission:

'Healthy diets remain unaffordable for 3.1 billion people (FAO et al. 2022), and obesity and other non-communicable diseases associated with unhealthy diets have been rising worldwide over the past few decades. The risk of food becoming less affordable for the poorest needs to be addressed head on: Food in the Anthropocene: the EAT-Lancet Commission on healthy diets from sustainable food systems

- The Lancet

'Environmentally sustainable production throughout the food system. Food systems contribute significantly to total GHG emissions, biodiversity loss and environmental pollution. They account for about a third of global GHG emissions, with conversion of land to agriculture and agricultural production itself responsible for much of that amount, notably in the form of methane emissions from ruminant livestock and rice production. Emission intensities also vary significantly within product categories, depending on production practices and contexts.'

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The analysis claims that option 2 is more cost-effective in delivering public health benefits than option 1, but there is insufficient explanation to back this claim up.

The analysis should have considered the fact that in New Zealand (and Australia) there is a real problem of obesity which is in turn linked to non-communicable diseases and chronic conditions such as heart disease, stroke, osteoarthritis, cancers, type 2 diabetes, mental ill-health, multiple morbidities and premature death. In missing this focus, the analysis also ignores the heightened effects of ill health among high need populations (eg. In New Zealand, Māori, Pacific, high deprivation communities, disabled people).

The analysis about potential additional burden for industry in making applications of inadvertently broadening FSANZ's public health responsibilities is unhelpful and is the wrong risk to give prominence. This is because the Act needs strengthening to adequately give effective to its existing primary objective of protecting public health and safety.

This statement is not persuasive or clear: 'Food Ministers would have greater capacity as decision-making to ratify certain changes to food standards could be delegated to departmental officials.'

Delay in processing proposals has not been quantified under option 2.

There is insufficient reasoning supporting the assumption that each standard review results in a public health benefit.

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:

Not in isolation from context. For example, parts of the industry promote highly processed foods as a solution for hunger and economic stagnation. However, specific populations experience inequitable impacts in terms of resulting health outcomes. These include people living in high deprivation areas, disabled and Māori and Pacific peoples.

To protect public health, the Ministry of Health advises New Zealanders to enjoy a variety of nutritious, less processed foods every day (ie, foods low in saturated fat, salt and sugar from 5 food groups). Healthy food unavailability and unaffordability are barriers to consumption.

The characterisation of option 1 as do nothing with current problems and option 2 as the package of solutions, predetermines the outcome the analysis reaches. Yet, legislative changes could be made without adopting the whole package of proposals in option 2. Some of the proposals in option 2 are possible now or under option 1.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

From a public health perspective, the analysis mischaracterises some of the subproblems and in so doing fails to give sufficient prominence to the primary objective of protecting public health and safety.

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:

Both the risk-framework and new pathways could impact short-term health outcomes (food safety, disease outbreaks) and long-term health outcomes (chronic conditions). The analysis should have considered the likely impacts of the framework and new pathways separately and in more detail.

There should have been a proposal in option 2 to apply cost savings to proposals and reviews and to impose statutory timeframes on proposals and standard reviews.

FSANZ wishes to streamline processes (saving costs to industry and itself) and use the savings to expand some of its functions (not necessarily protecting public health). To do this it needs to both cut its processing costs and seek further funding.

Option 1 (status quo) does not (at least as it is characterised in the IA) facilitate expansion and so the analysis reaches the conclusion that option 2 delivers higher net present value than option 1.

It is also easy to say that option 1 does not solve current problems so option 2 is preferred. This does not take account of the fact that option 2 could generate new problems.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The analysis mischaracterises some of the subproblems and does not give sufficient prominence to the primary objective of protecting public health and safety.

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:

Reframe the discussion so that it is around diet and unhealthy weight and monitoring nutrition impacts, better aligning with s 18 outcomes and government policy on dietary guidelines.

Consider more:

- the cumulative exposure of dietary risk factors over time based on food consumption data, as it currently does for some additives, such as artificial sweeteners
- evidence on the adverse health outcomes resulting from consuming certain food or ingredients and the availability of these in the food supply (eg, ultra processed foods)
- environmental science, agricultural science, health and nutrition science in building the evidence base
- enabling consumers to make food choices in support of national dietary guidelines, by improving alignment of the food supply with dietary guidelines – such as through food reformulation.

Monitor food environments within the Code's ambit, such as food marketing to children, the voluntary Health Star Rating System, the accuracy of health claims, whether the warning labelling is effective and for whom, and reformulation targets (eg, folate, sugar, sodium, iodised salt). Also monitor and evaluate more broadly the health impacts of food standards in accordance with government dietary guidelines and recommendations.

Include the impacts of food regulation on high need/priority populations.

Reiterate the importance of regular nutrition/consumption surveys so that data is available for setting and varying foods standards in an evidence-informed and timely way. A food levy could support ongoing national nutrition surveys across both countries to help inform the work of FSANZ, including priority setting.

Alternatively, our 2 governments could commit to national nutrition surveys to ensure FSANZ has the data they need to prioritise and monitor the food systems in both countries.

Also needed are snapshots of what is the effect of including a class of food ingredient, such as emulsifiers, on the market and on existing products, consumers and public health.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Thank you for the stakeholder workshops (useful) and opportunity to comment.

The 20 components in option 2 are presented as synergistic which means if anything drops out there will be flow on effects to other components and cost implications. Therefore, the present net value would then be recalculated. Also, several of the 20 components are exploratory in nature rather than firm proposals for change. These things mean the final proposals may look quite different to this IA.

The IA is broad in scope, lengthy and complex and the submission questions overlapping which places a considerable barrier and resource burden on stakeholders wishing to comment meaningfully on. This, in combination with the relatively short timeframe for submissions (even with an extension), means that there is likely to be a relatively small number of submissions by public health groups and consumers on the proposed concepts.

In future, it would be more consultative and kinder on stakeholders to:

clearly identify which components are the most important, without which the preferred option could not proceed and why
reduce the number of multiple and overlapping questions on the same issue.

Given amendments to the Act are intended to last for 3 decades or more, a broader approach to the scope of the changes - recognising One Health drivers, and environmental sustainability (informed by indigenous perspectives of the holistic nature of health and the environment) would also have been advisable.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 13:40:36

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Catherine Anderson

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Alcohol Healthwatch

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

New Zealand

Other: :

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 Executive Summary of the IA states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all and as a result the methodology completely fails to factor this in.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused

simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

We do not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs food security requires.

Alcohol healthwatch supports FSANZ working to ensure that consumers have informed consent about the products they're consuming

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;

Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;

Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or

food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food and beverages, including alcohol Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of

public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost. I

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We Support FSANZ giving effect to Te Tiriti o Waitangi, and enable Māori to fully participate in the FSANZ process.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

The burden of disease attributable to the food supply [1];

Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;

Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines [2];

Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3];

Assess the impact on the burden of disease attributable to the food system;

Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;

Assess the cumulative impacts of the introduction of new foods on public health outcomes;

Reduce availability of unhealthy foods targeted at children.

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question. The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

The risk criteria and assessment matrix

The organisations whose assessments would be used as basis for minimal assessment approach

What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Alcohol Healthwatch advocates for this to include the wider harm of the product, basing the risk of alcohol for example on it being the most harmful drug in Aotearoa.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.-----

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.

Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the

question in relation to other initiatives under component 2.1 for more details).

Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

Alcohol Healthwatch acknowledges that Aotearoa has tried to prevent Alcohol Cancer warning labels in Ireland through a trade perspective. We would not want to see something similar happen here. We support food labeling being able to be decided by each country (or trans-tasman)

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Alcohol Healthwatch highlights concern surrounding low and no alcohol products - these may be considered low risk by FSANZ, however we hold concern that the brand stretching, and market placement of these products carry risk. these products should only ever be targeted and 18 years and over.

research shows under 18 who use low and no products are more likely to drink heavily once they turn 18.

research from flinders university also highlight that parents are concerned and confused about low and no products.

WHO also now say there is no safe limit for ANY alcohol product.

We are concerned there is no clear strategy or framework for what would be a low risk product.

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:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

We seek more clarification about what would be considered low risk

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

Alcohol Healthwatch would also like to see the risk include the need to ensure public health, and the health of consumers is given a strong weight

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No response.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

Alcohol Healthwatch believes FSANZ MUST give effect and take into account te tiriti o waitangi. it must be central to any policy decisions, especially for policies that will effect Māori.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food to market.

Alcohol Healthwatch believes FSANZ MUST give effect and take into account te tiriti o waitangi. it must be central to any policy decisions, especially for policies that will effect Māori.

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Alcohol Healthwatch would hope that this allows for a framework to be created for products like low and no alcohol products.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

No response

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:

No response

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Alcohol Healthwatch strongly DOES NOT support a code of practice by industry, for the industry. these frameworks do not work, they do not support public health and are not transparent.

We have already seen the industry fight for change to the alcohol pregnancy warning labels on external packaging in CCC's which is now only optional

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to "deliver three proposals per year". In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Alcohol Healthwatch advocate for the FSANZ board to be accessible and flexible to ensure a diverse range of board members to ensure the board is a fair representation of Aotearoa and Australia

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What 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:

No response.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

No response.

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:

No response.

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:

No response.

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:

No response.

How would this need to be implemented to be successful?

Free text box, no character limit:

No response.

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

No response.

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:

No response.

How would this need to be implemented to be successful?

Free text box, no character limit:

No response.

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:

No response.

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

No response.

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:

No response.

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Alcohol Healthwatch We believe FSANZ should give effect to te tiriti o waitangi and embed it in FSANZ policy

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Alcohol Healthwatch support FSANZ working with alcohol regulatory agencies to ensure labeling is being complied with

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:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.

The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

Alcohol healthwatch believes FSANZ MUST give effect to te tiriti o waitangi

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

Alcohol Healthwatch supports public health and transparent consumer health information

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

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:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.

The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.

Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

The proxy used to quantify public health impact is not appropriate for proposals as a whole.

The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.

Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis. It should not be assumed that every application has a consumer benefit.

A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.

Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.

Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.

Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood

of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

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

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 15:24:39

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Clare Hughes

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Cancer Council Australia

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

[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:

Cancer Council acknowledges that to date Australia's food regulatory system has been effective in protecting Australians from food safety risks such as foodborne illness, ingredients and additives without a history of safe use, contaminants and high levels of chemical residues. Our main concern is that despite the primary objective of the Food Standards Australia New Zealand (FSANZ) Act being the protection of public health and safety, the food regulatory system does not protect consumers from long-term health impacts of poor nutrition, excess bodyweight and associated diet-related diseases. Our view is that the long-term public health impacts of the food regulatory system have not been adequately addressed in the Impact Assessment (IA).

In the last 30 years rates of obesity and preventable diet-related diseases have risen to alarming levels and continue to increase. The food system has an important role to play in addressing this increase in diet-related diseases and there is an ongoing responsibility to protect consumers from the long-term health consequences of over-consumption of ultra-processed foods.

The current methodology fails to identify a key policy problem that needs to be solved - that the FSANZ Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related chronic disease, and the provision of adequate information to enable consumers to make informed choices. This issue was the primary concern raised by public health

and consumer organisations in their submissions on the Draft Regulatory Impact Statement.

While Cancer Council supports the suggestion in policy problem 1 to incorporate a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations, this is not sufficient to deal with the actual policy problem of protecting long-term health and addressing preventable diet-related chronic disease. As a result, the IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related chronic disease. Cancer Council supports the recommendation put forward by The George Institute that a Public Health Test be incorporated into the Act. (See our response to the question in relation to other initiatives under component 2.1 for more details).

The IA presents two options for consideration – Option 1 to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 to 'modernise regulatory settings' by adopting the entire package of reforms. We do not agree that Options 1 and 2 are considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Cancer Council recommends that the Impact Analysis consider sustainability and food systems security, including vulnerability to climate change and other disruptors, such as pandemics and international conflict. The food regulatory system has an important role to play in safeguarding food safety and security.

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:

Cancer Council shares the concerns of other public health groups (e.g. The George Institute and Food For Health Alliance) with respect to the ranking of some Policy Problems and sub-problems and support their recommendations for re-ranking.

The sub-problems that already have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;

Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews;

Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or

food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3).

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh all other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater

than suggested for sub-problem 2. This problem should also include Policy problem 2 sub-problem 3 (resourcing constraints), which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Cancer Council supports amending s3 and s18 of the FSANZ Act to include a definition of public health and safety to highlight that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related chronic disease, when developing food standards. However, while important, this change is not likely to deliver any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has already been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board. Missing from the IA and the reform options is clarity about a process or mechanism for how a stronger focus on public health and safety including the long-term risks to health will be done. A definition alone will not reduce confusion about how FSANZ is to consider long-term risks to health when developing food standards. Cancer Council supports the recommendation of other public health groups such as The George Institute and The Food For Health Alliance that a Public Health Test be included in the Act to clarify this.

We support the use of the existing definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The existing Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures has been in effect for 10 years and already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. While the inclusion of the definition may clarify for external stakeholders, FSANZ's role in protecting long-term health, it will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder, including industry, and strongly recommend this is removed as a qualified cost.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ's role in mitigating long-term risks to health, including preventable diet-related disease, illness and disability and the diet-related risk factors for them, when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ makes decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is achieved.

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:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. Aboriginal and Torres Strait Islander and Māori peoples must be adequately consulted and involved in changes in the Act, including provisions or language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for Aboriginal and Torres Strait Islander and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation, and specific consultation should be undertaken in culturally appropriate ways, to ensure that changes in the Act reflect Aboriginal and Torres Strait Islander and Māori ways of being, knowing and doing and are appropriate to the regulation of food 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:

We strongly suggest FSANZ consult specifically with Aboriginal and Torres Strait Islander and Māori peoples and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of Indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health alone will not ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

We strongly support the Public Health Test as proposed by The George Institute in their submission as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

- The burden of disease attributable to the food supply [1];
- Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

- Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;
- Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines [2];
- Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3];
- Assess the impact on the burden of disease attributable to the food system;
- Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;
- Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- Reduce availability of unhealthy foods targeted at children.

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply.

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health harms.

Cancer Council supports the recommendation put forward by other public health groups that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

Cancer Council appreciates that the introduction of a risk-based framework can present both opportunities and risks, however the IA provides insufficient detail to support the application of a risk-based approach at this stage. Within the IA there are limited details on the framework itself including how it is 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 does not appear to produce an equivalent approach for decisions that would impact public health compared to industry. It appears from the IA (including details in Appendix D) that all public health decisions would be assessed as 'high risk' whereas some industry/commercially driven decisions would be assessed as 'low risk'. The consequence of this is that the existing disparity between the approach to public health and industry decisions under the Act could worsen, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

Cancer Council supports further consultation on the risk-based framework. This should commence immediately and be developed alongside the Act review. Further consultation should include a focus on the risk criteria and assessment matrix, details on organisations whose assessments would be used as a basis for 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 Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

Given the limited information provided in the Impact Assessment, Cancer Council cannot estimate the likely impact of introducing a risk-based framework. We recognise that there will be benefits and risks for all stakeholders associated with a risk-based approach and as mentioned previously we support further consultation on the 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:

If a risk-based and proportionate handling of applications and proposals is to apply this must have public health considerations. The limited details of the risk framework, as discussed in the previous response, suggests that many public health outcomes would classify as high risk and as such would likely fall out of the remit of this option. This could result in changes being of benefit to the commercial sector, rather than public health.

Cancer Council recognises that there are several international jurisdictions that undertake rigorous risk assessments and that in other areas of regulation,

international risk assessments are adopted. It could be that determinations from selected international jurisdictions be used to support FSANZ decisions. However, the details in the IA do not provide sufficient assurance that public health considerations and impact would be adequately addressed when accepting international risk assessments. If the determinations of overseas bodies are adopted, there must be an assurance that the overseas bodies have strong processes for managing conflicts of interest, such as those set out by the World Health Organization.

An expedited process for incorporating risk assessments from international jurisdictions rather than simply accepting or adopting these assessments may be appropriate to mitigate risks. It is important that any system be transparent, credible and risk based. If the use of international jurisdictions work is increased, it is essential that the scientific and policy basis for FSANZ decisions are publicly available.

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:

Cancer Council recommends that if FSANZ automatically recognises international standards, the standards should only be harmonised where there are ideal outcomes for public health, as opposed to standards that enable the market of nutrient-poor foods to expand. The option to harmonise food standards with international standards should only be given to those that meet the 'Public Health Test' (see previous responses under component 2.1).

Cancer Council notes that there is insufficient detail in the IA to understand how this would work in practice. Providing further information on the approach and requirements in recognising international standards, and conducting additional consultation regarding the application and impacts on public health outcomes is recommended.

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:

Cancer Council notes that there is limited information on how this would apply in practice, including what the minimal assessment of the minimal check pathway would include. We are concerned that the minimal check pathway appears to prioritise commercial decisions as opposed to benefiting public health. It is our understanding that the risk assessment and evidence will not be open to public scrutiny, which potentially poses a risk to upholding the primary objective of the Act; to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

Cancer Council recognises that the IA acknowledges that further work on new pathways is needed. However, we are concerned that new pathways could remove public consultation. To ensure confidence in this approach there would need to be an assurance that internal FSANZ processes will mitigate potential risks of removing public consultation processes and ensure public health outcomes are adequately considered and addressed in any new pathways. The Public Health Test previously mentioned would help to achieve this.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

Cancer Council notes that minimal information is included on the new pathway options and that more work would be needed if they are to proceed. We highlight that the limited information presented does not appear to deliver broad public health benefits.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This presents the risk that commercial decisions may be prioritised at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

Cancer Council recommends that further details and consultation be provided 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:

As above, there is no evidence provided that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions that could lead to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

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:

Cancer Council is concerned that there is not enough information regarding the risk framework to support this option at present.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

No response

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:

Cancer Council recognises that delegation of some decisions could improve efficiencies, provided an appropriate risk framework is in place. We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. However, as noted in our responses on the risk framework there is currently insufficient detail about this framework, and recommend further consultation is undertaken to ensure that it adequately assesses public health impacts. The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No response

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:

Cancer Council recommends FSANZ consult specifically with Aboriginal and Torres Strait Islander and Māori peoples and experts to understand what they need and want from the food regulatory system, including for traditional foods and ingredients.

We note that without meaningful consultation there is a potential risk of the commercialisation and potential for exploitation of traditional foods by non-Indigenous 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?

Prefer not to respond / I don't know

Free text box, no character limit:

Cancer Council recommends FSANZ consult specifically with Aboriginal and Torres Strait Islander and Māori peoples and experts, on whether further guidance materials are necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with appropriate experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of Aboriginal and Torres Strait Islander and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed 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:

Cancer Council supports increasing resources for FSANZ to enable them 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 (through use of Public Health Test) can help determine what reviews are undertaken and the prioritisation of these. We argue that additional resourcing for FSANZ should be provided regardless of the outcomes of this Review, with all components that propose additional funding being assessed separately as per our response to the methodology question.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

Cancer Council recommends that the Act be amended to include statutory timeframes for standard reviews. There must be clear criteria established for how and when standard reviews will be undertaken. These reviews should be undertaken to support FSANZ's primary objectives as outlined in section 3 of the Act.

Cancer Council recommends a timeframe of 3 years from "decision to prepare" to "notification to FMM" (Food Ministers Meeting) with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism in place through the proposed reforms to ensure this, and no framework to govern how this would work in practice. Further details are also needed on how FSANZ will be able to undertake this from both a time and resource perspective.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

No response

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:

No response

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced, and to risk public safety, health and confidence in the food system and we do not support this. Recent work by Ngqangashe et al suggests that the most effective food and nutrition policies involve legislative and regulatory approaches, combined with best practice design and comprehensive monitoring and enforcement, and importantly absence of high industry involvement. High industry involvement in the policy process is often associated with a power imbalance in favour of industry.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.
- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Cancer Council notes that the reform options in the IA will not necessarily result in more proposals being progressed. Specifically, the summary of Option 2 of Section 6 of the IA states that FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a timelier manner.

To improve this, Cancer Council recommends that the Act be amended to include statutory timeframes for proposals. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, however this should not result in proposals being delayed and extending over many years. To support the timely and efficient progress of proposals, a timeframe should be applied. The timeframe needs to allow sufficient time for FSANZ to identify, and if necessary, generate evidence to support decision-making.

In line with our recommendation for standard reviews, we recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” (Food Ministers Meeting) with the potential for a one-year extension to be sought from the Food Ministers Meeting in exceptional cases where gathering the necessary evidence is taking longer than usual.

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:

Cancer Council supports amending the compositional requirements of the FSANZ Board to increase flexibility and reflect contemporary governance processes. We support the recommendations of the 2014 review and the inclusion of additional skills that would support good governance and oversight. We note that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in Aboriginal and Torres Strait Islander and Māori food and culture could be added to these additional skills, we note that this could be achieved with the creation of specific positions for Aboriginal and Torres Strait Islander and Māori people on the FSANZ Board. This amendment will aid the Board in adequately achieving contemporary governance standards and processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture.

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:

Cancer Council does not support changing the current nomination process to an open market one, particularly for the public health specific positions. We strongly oppose any decision that may reduce the number of public health positions on the board. We acknowledge the concept of removing statutory requirements for the Minister to seek nominations from prescribed organisations may deliver some efficiencies and open the nomination process to a broader range of public health organisations and individuals to make nomination, it could also pose a risk to the public health and consumer positions.

With limited detail provided on how the open market process would work in practice, this is a potential risk from an open market process. If the statutory requirement is removed, there must be clear and transparent criteria for Board member skills mix. Conflicts of interests must be strictly managed and public health nominations must be free of real or perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Cancer Council supports the removal of the option for applications to be expedited from the Act. Removal of the expedited pathway will provide a level playing field for all those making applications.

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:

Cancer Council notes the considerable challenges faced by FSANZ in terms of resourcing and funding. Ongoing financial viability to ensure FSANZ undertake its operations and meet the objectives of the Act are critical. An industry wide levy could provide a reliable source of known funding for FSANZ on an ongoing basis.

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:

no response

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:

No response

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Cancer Council notes that compulsory fees may not be as financially sound as an industry-wide levy for resourcing FSANZ. We wish to reinforce that there should not be an option to pay for expedited applications under any fee structure.

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:

Cancer Council notes that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate for FSANZ, to ensure FSANZ maintains its independence.

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:

no response

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:

no response

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:

no response

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:

no response

How would this need to be implemented to be successful?

Free text box, no character limit:

no response

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

no response

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

no response

How would this need to be implemented to be successful?

Free text box, no character limit:

no response

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:

no response

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:

Cancer Council supports FSANZ continuing to work with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

Cancer Council recommends that the Public Health Test (noted in response to component 2.1) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings; this should be continued. Additional engagement between FSANZ and FRSC would likely deliver benefits to both parties and support a stronger focus and robust discussion of the purposes of both FSANZ and FRSC in protecting public health and ensuring coordination of effort.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Cancer Council recommends that FSANZ receive increased resourcing to ensure it undertakes its core functions, including regular standard reviews and efficient processing of proposals. Adequate resourcing will also ensure it has capacity to continue and enhance collaboration effectively with the FRSC and the FMM.

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:

Cancer Council supports this and strongly encourages that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can support in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

Cancer Council recommends the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. Data that should be collected and curated includes (but is not limited to) data on:

- Food supply including composition
- Sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.

Cancer Council notes that FSANZ will play a key role in data curation, however the collection and use of the above data is beyond the responsibility of only FSANZ. A comprehensive nutrition monitoring and surveillance system could be housed with FSANZ or other entities, such as the new Australian Centre for Disease Control. We note that additional resourcing for FSANZ is needed to enable them to play a 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:

We support the sharing of information to support the development of the food standards code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing between international partners should be an important part of an effective international food system. Information sharing is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards which we oppose. Consideration for the Australia and New Zealand context is required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

no response

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:

no response

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry. Cancer Council is concerned that this could place a considerable burden on FSANZ to perform this function so we would not want this function to impact FSANZ's ability to progress proposals and other activities likely to deliver public health benefit.

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:

Cancer Council supports the amendment of the Act to ensure Aboriginal and Torres Strait Islander and Māori peoples are properly consulted on and engaged with FSANZ work to ensure cultural considerations are taken into account at all stages of the food standards process. The development of guidelines in consultation with Aboriginal and Torres Strait Islander and Māori peoples is one way this could be achieved. Food expertise of Aboriginal and Torres Strait Islander and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures on Aboriginal and Torres Strait Islander and Māori peoples. The food regulatory system must be inclusive of diverse needs of our communities, as it relates to nutrition, culture, food security, and public health. Beyond the development of guidelines, we recommend a deeper consultation process with Aboriginal and Torres Strait Islander and Māori people and organisations to determine specific requirements and fully consider Indigenous perspectives in the work of FSANZ. This process will require a significant investment in time and resources to develop relationships with the most appropriate Aboriginal and Torres Strait Islander and Māori stakeholders and progress the work in a meaningful and positive manner.

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:

Cancer Council supports enhanced collaboration between FSANZ and jurisdictional enforcement agencies to ensure consistent interpretation and greater enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

No response

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:

Cancer Council recommends that the cost benefit analysis appropriately reflect public health costs and benefits. Specifically, we recommend consideration of more detail on the methods and assumptions in relation to the costs and benefits to consumers and government.

- A breakdown of the costs and benefits for all impacted stakeholders for each type of FSANZ work separately (ie. not classifying proposals, reviews and applications as all having the same public health benefit for consumers)
- Details on what is the public health benefit
- Details on short- and long-term public health benefits
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

Further details are included in the following questions in this section.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

Cancer Council does not have expertise in this area. We strongly recommend consultation with organisations and peak bodies for Aboriginal, Torres Strait Islander and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

Cancer Council is unable to comment on the data on delay costs to industry. However, we note that further detail is needed on the delayed costs in the analysis. The costs used for the analysis should be independent. This is in line with the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and any gaps or limitations in the data must be discussed and that assumptions be disclosed.

Cancer Council notes that consumer safety and public health should be prioritised over commercial interests.

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:

Data and expertise are available across 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. We recommend significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

no response

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 per our response to this question for option 1, Cancer Council recommends that the cost benefit analysis appropriately reflect public health costs and benefits. Specifically, we recommend consideration of more detail on the methods and assumptions in relation to the costs and benefits to consumers and government.

Cancer Council seeks further clarification on how the 'risk-based' approach improves public health outcomes. For example, is this based on having more time for proposals, noting that the model keeps the number of proposals consistent? We also seek clarification on whether there has been any quantification of the cost of FSANZ in being less rigorous in some areas following a risk-based approach, in particular on public health outcomes.

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 per our response to this question for option 1, data and expertise are available across 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. We recommend significant effort be dedicated 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:

Cancer Council suggests that the conclusion of the net benefits section 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 on this analysis particularly to determine whether the public health benefits proposed will be realised.

The current cost benefit analysis does not consider the burden of disease throughout its entirety and there should be modelling included on the costs as a result of diet-related diseases from the reform options. This includes quantification of the public health impact of increasing the number of products entering the market that increase the risk of diet-related diseases in both reform options. There should also be consideration of the poor health attributable to delays in food regulatory measures that protect public health, in both models.

In relation to the costing of proposals, the assumptions are based on FSANZ to 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 and with no mechanisms to reduce delays this should be included.

The modelling at present assumes that all applications have a consumer benefit, however these are generally for the benefit of industry rather than public health outcomes. This should be better reflected in the analysis.

Cancer Council recommends that the cost to industry of confirming FSANZ's role in considering long-term health, be removed as a cost. This role has already been confirmed and should not be considered a cost to industry in the analysis.

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:

Cancer Council notes that 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 and this must be considered when comparing the two options. As a result of the current methodology, the results weigh heavily towards option 2. We also note that the limitations in the policy problems themselves (see responses in section 3), limit this assessment.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

Cancer Council notes inconsistencies in the IA of the negative impact rating of policy problem 1. On page 89 it describes the negative impact of the policy problem as 3 (high) in the text and 2 (moderate) in the table. We support a rating of 3 (high) as per earlier responses.

Cancer Council defer to The George Institute and Food for Health Alliance to provide further details on the ratings assigned to each of the sub-problems.

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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. Cancer Council recommends that each component is assessed separately. This is particularly important as not all components will necessarily be implemented. It is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have the potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Re-allocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload, and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

Cancer Council notes that the IA concludes that option 1 is riskier than option 2. A number of the risks under option 1 can still be addressed under status quo and option 2 won't necessarily resolve all the risks, so this must be considered.

Cancer Council supports that the risks of unsafe foods entering the market or risks to population health of introducing more unhealthy foods to the market should be assessed as major.

We recommend the risk assessment is reviewed in light of the following comments.

- 'Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety- particularly long-term health- are not well managed'. Although option 2 proposes to clarify the role in long-term public health within the definition, it is already the responsibility of FSANZ and without any additional support in Option 2 to operationalise this, it's unlikely there will be significant changes. Furthermore, some of the proposed reforms will remove oversight, which may heighten public health risk.
- 'Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks'. As noted above and throughout the above, this is already the role of FSANZ. As such, we disagree that confirming FSANZ's already agreed on role, in mitigating public health risks should not be considered a risk.
- 'Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market'. We support the consequence rating for this risk, however, suggest the likelihood should be assessed higher, due to the proposed reforms and the implications of less oversight and reduction in regulation.
- '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'. We support the consequence rating for this risk, however, suggest the likelihood should be assessed as higher, due to the proposed reforms and the implications of less oversight and reduction in regulation.
- '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.' We suggest the consequences of this is higher than moderate-minimum, given this has the potential to undermine confidence in the food regulatory system.
- '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.' We acknowledge that resourcing constraints means that a subset of functions will continue to be prioritised. However, under option 2, without statutory timelines for proposals and reviews, this risk is unlikely to be adequately addressed.

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:

See response to next question.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ's operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to increase resources for FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the Act

To achieve FSANZ's purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has progressed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health, and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply to support long-term public health outcomes. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments on a regular basis, and its ability to shape product formulation and labelling across the food supply has a scale of impact on diet-related chronic diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

Cancer Council is concerned that the IA does not represent public health and consumer organisations' feedback from previous consultations accurately in the 'Summary of stakeholder feedback' section and more significantly, this feedback has not been reflected in the proposed policy problems and solutions.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and may in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

The public health community's perspectives on FSANZ operations, the role of FSANZ in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, has been consistently communicated but are not reflected in the Impact Assessment.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to safeguard health.

Our submission proposes measures that will safeguard public health, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

N/A

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 15:38:19

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Jennifer Rae McCann

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Infant and Toddler Foods Research Alliance

Which sector do you represent?

Public Health

Other: :
IPAN - Institute for Physical Activity and Nutrition, Deakin University

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 main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

The approach undertaken to identify and prioritise policy problems has not been well documented and little detail is available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

We are disappointed that the current methodology fails to identify what we see as the key policy problems that need to be solved. In its current form, the Act does not enable the food regulatory system to meet its two primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This was raised by the

majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021) and it has still not been addressed sufficiently. The methodology of just incorporating a definition of public health appears an attempt to minimise external stakeholder confusion about FSANZ's existing roles and operations. An expanded definition is necessary, but it is insufficient to deal with the actual policy problem. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we support the development and incorporation of a Public Health Test (see response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents only two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations (which is clearly a non-option), and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately differentiate the changes that genuinely require significant legislative and operational reform, from those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

Options 1 and 2 should not be considered two independent options. There is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". Two of the negative externalities that the Act does not include via impact analysis are food systems security and vulnerability to environmental change/ impact on the environment (including climate change and biodiversity loss). This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is given lip service in feedback outlined in Section 7 of the Impact Analysis. We note that consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis. No reasoning has been given for this decision. The food regulatory system, as a major component of the broader food system, has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety, security and sustainability. It would further allow FSANZ to better align with other government strategies, such as Australia's Strategy for Nature (our national biodiversity strategy) and the intergovernmental Kunming-Montreal Global Biodiversity Framework. Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health (1). Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use (2-5). Food production is destined for collapse if environmental issues are not addressed.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability (6) and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. This means that in order to be current, and fit-for-purpose the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

(1) Watts, Nick et al. 2018 The 2018 report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come. *The Lancet* 392(10163), 2479 - 2514

(2) Crippa, M., Solazzo, E., Guizzardi, D., Monforti-Ferrario, F., Tubiello, F.N., Leip, A., 2021. Food systems are responsible for a third of global anthropogenic GHG emissions. *Nat. Food* 2 (3), 198–209.

(3) Earthscan 2007 Water for Food, Water for Life: A Comprehensive Assessment of Water Management in Agriculture. International Water Management Institute, London, UK.

(4) Benton, T.G., Bieg, C., Harwatt, H., Pudasaini, R., Wellesley, L., 2021. Food System Impacts on Biodiversity Loss. Three Levels for Food System Transformation in Support of Nature. Chatham House, London.

(5) Diaz and Rosenberg 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321, 926–929

(6) James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health (including food security and sustainability) when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability and should therefore not have equivalent or higher impact ratings than sub-problems dealing with these long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection (relating to short and long term consequences). There are no proposed reforms in the IA that will improve public health and consumer outcomes.

We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than that suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act (and then further in the Ministerial Guidelines) to address this (see response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health, including food security and food sustainability, and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, THE DIET-RELATED RISK FACTORS FOR THEM AND FOOD SECURITY AND SUSTAINABILITY, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated priority role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors, food security and food sustainability.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are

appropriate to the regulation of food as it relates to their culture and health.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes, food security and food sustainability cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews.

We strongly support a modified Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply;
- b) The environmental effects from the food supply; and
- c) Estimated benefit of change to the food supply (based on a) and b) above) from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as determined by the approach recommended by Dickie et al (1)
- 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, noting that the upcoming dietary guidelines are likely to consider sustainability impacts;
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease, i.e. ultra-processed foods and processed foods high in salt and added sugars;
- 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 (including costs associated with environmental issues, with climate change and biodiversity loss as key priorities);
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

It will also be important to educate existing staff within FSANZ who regularly make decisions regarding the definition of public health and, in particular, the ramifications of FSANZ decisions on longer term health, food security and sustainability. We have experience with our concerns often falling on deaf ears or being informed that these longer term impacts are not within FSANZ's remit.

(1) Dickie, S.; Woods, J.; Machado, P.; Lawrence, M. A novel food processing-based nutrition classification scheme for guiding policy actions applied to the Australian food supply. *Front. Nutr.* 2023, 10, 1071356

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The information given is too limited to support such an approach, as such, we cannot definitively answer this question. The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden, take longer and result in a regulatory system that favours industry benefits over public health. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

There are concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as a basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.-----

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Modified Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Test is the criterion; and then the risk framework should set out how the likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the 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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet a Modified Public Health Test.

- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies such as the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be only harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Modified Public Health Test (see response to the question in relation to other initiatives under component 2.1). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

It is unclear how this approach would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Modified Public Health Test.

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, it appears that the minimal check pathway would only apply to applications and not proposals. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Modified Public Health Test. As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Modified Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Modified Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Modified Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

There are also considerations of environmental aspects such a habitat damage, ecosystem disturbance and animal/plant population extinction if these foods were to be introduced commercially without appropriate regulatory support.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly.

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Modified Public Health Test is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that flow throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

In our opinion there are no matters that would have been better solved by a Code of Practice.

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:

N/A

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a timelier manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex

and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms.

This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon. Some examples:

- P1010 Review of Formulated Supplementary Sports Foods – commenced June 2019, consultation paper 2 completed Sept 2023, with no further timeline noted on FSANZ workplan.
- P1028 Infant Formula Products – commenced July 2013, numerous waiting periods between consultation periods and now final ministerial notification is for late June 2024.
- P1047 Review of regulatory nutrient reference values – Proposal prepared in August 2018 – and progress has been delayed due to other priorities.
- P1049 Carbohydrate and sugar claims on alcoholic beverages – commenced late August 2018 – proposed notification to ministers December 2024.
- P1056 Caffeine Review – commenced early June 2021 and end of consultation period March 2023 with no further dates for progress.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy would provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What 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:

N/A

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees would not result in a level playing field for all of industry and are likely to result in the risk of industry capture. Consumer and public health groups are also unlikely to be able to afford fees charged for progressing an application. Compulsory fees do not provide as secure a funding model as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovering services frequently represent a minority funding stream for standard-setters. This sort of activity will also likely negatively impact FSANZ's independence. Furthermore, it is also not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1, so there is no need to change legislation to allow this.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

The Modified Public Health Test should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work, are progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

No

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 needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

We support this and strongly request that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact on public health nutrition, food security and sustainability outcomes. Data can help in identifying priorities, evidence-based development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed.

We recommend the development of 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
- Food composition
- Food sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

A Statement of Intent used to be a feature at the beginning of each food standard and it was helpful in understanding the reasoning for the Standard, and avoiding misinterpretations of the code. We would support the re-inclusion of statements of intent.

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:

No. The statement of intent should only relate to the FSANZ Priority Objectives - in relation to protection of public health and safety and to enable consumers to have sufficient information to make informed food choices.

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry, but where funding is scarce, this would be a lower priority.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if this leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease, food security and food sustainability) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section states that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease or effects on food security and sustainability throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health/environment, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system. Furthermore, costs to the environment should be considered, particularly any risks of increasing climate-related impacts or biodiversity loss, which would have implications for food security. These impacts need to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified. As noted in our responses above, we recommend that there is a time limit set for completion of proposals of 3 years.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit and offering consumers 'more choice' should not be considered a benefit if the food/product on offer is ultra-processed or otherwise is likely to contribute to diet related disease, poorer food security and an unsustainable food system.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn’t necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health/sustainability – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ’s ability to consider risks to long-term health/sustainability, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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, safety and food sustainability.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is low (3). Furthermore, the food industry is a multi-billion dollar industry, capable of absorbing costs, compared with a publicly-funded healthcare sector which is overwhelmed and underfunded. The priority needs to clearly be in favour of protecting public health.

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

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. This is particularly true for Australia as climate impacts are likely to more severely impact our agricultural areas than some other parts of the globe. Not only could this increase the likelihood of food shortages and thus impact our nation's food security, but natural disasters are breeding grounds for disease, which could have direct impacts on human health, with the possibility of food as a vector. Finally, many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases/food security/sustainability that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the

food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

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:

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

Boylard 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 not 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 emphasizes 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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 16:43:13

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name:
Department of Nutrition, Dietetics and Food, Monash University

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address:
[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 Executive Summary of the IA states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA and as a result the methodology does not factor this in. Further, we note that the current methodology does not acknowledge the important bi-directional relationship between public health and the natural environment including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the

provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we support the development and incorporation of a Public Health Test (see response to component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

Options 1 and 2 should not be considered two independent options. There is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security and sustainability. It would further allow FSANZ to better align with other government strategies, such as Australia's Strategy for Nature (our national biodiversity strategy) and the intergovernmental Kunming-Montreal Global Biodiversity Framework.

Public health is not possible without a healthy and thriving natural environment. Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability (1) and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. This means that in order to be current, and fit-for-purpose the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs required for food safety and security and sustainability.

(1) James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health including food security and sustainability, when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;

- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3).

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability, and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection (of both short- and long-term health impacts) as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health including food security and sustainability, and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform “There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ’s remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade.” When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors, food security and food sustainability.

What would be the impact of clarifying the definition of ‘protection of public health and safety’ within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ’s role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ’s website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that “the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives”. FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Yes

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and

specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes, food security and sustainability is clear throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support a modified Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply [1];
- b) The environmental effects from the food supply; and
- c) 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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question. The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer and result in a regulatory system that favours industry benefits over public health. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there

appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should only be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

It is also unclear how this would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means. The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public

consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

There is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Modified Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the 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?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

We suggest the Public Health Test (see our response under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

In our opinion there are no matters that would have been better solved by a Code of Practice.

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

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:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

We would also support the engagement of food systems sustainability experts on the board, so that sustainability can be appropriately and correctly considered in assessments.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees would not result in a level playing field for all of industry and are likely to result in the risk of industry capture. Consumer and public health groups are also unlikely to be able to afford fees charged for progressing an application. Compulsory fees do not provide as secure a funding model as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters. This sort of activity is likely to negatively impact FSANZ's independence. Furthermore, it is not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

No

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

We support this and strongly recommend that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes in the short-and long-term. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code , but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Information sharing with international partners should only form part of the initial background research undertaken during standard development.

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:

A Statement of Intent used to be a feature at the beginning of each food standard and it was helpful in understanding the reasoning for the Standard, and avoiding misinterpretations of the code. We would support the re-inclusion of statements of intent.

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 statement of intent should only relate to the FSANZ Priority Objectives to protect public health and safety and to enable consumers to have sufficient information to make informed food choices.

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:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

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:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease, food security and sustainability) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We strongly recommend consultation with peak bodies for First Nations and Māori peoples to answer this question.

What are the current delay costs to industry?

Free text box, no character limit:

We do not consider it reasonable for delayed profits for industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease and effects on food security and sustainability throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit and offering consumers 'more choice' should not be considered a benefit if the food/product on offer is known or likely to contribute to diet related disease, poorer food security and an unsustainable food system.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health, food security and food sustainability should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current

workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health/sustainability – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health/sustainability, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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, safety and food sustainability.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is low (3).

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Resourcing of FSANZ:

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act:

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

FSANZ's role in the food supply:

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice:

We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders. Our submission proposes measures that will protect and promote public health and safeguard consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 18:30:31

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Carolyn Elizabeth Lister

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
New Zealand Institute for Plant and Food Research Limited

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

New Zealand

Other: :

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:

We have faced several issues, particularly in relation to feedback from the clients we work with, especially in the areas of nutrition and health claims and novel foods. These include:

- It takes a long time to change/implement new regulations which can slow innovation. Importance of driving innovation but not at the risk of loss of trust in the food system/products.
- Challenges around what constitutes a novel food or traditional food. Plus, lack of recognition of Indigenous foods and knowledge.
- Enforcement inconsistencies between NZ and different Australian states, including 'acceptance' of self-substantiation dossiers (we know FSANZ doesn't approve these, but some claims still appear on the register from Australia that don't seem robust and wouldn't have met the criteria imposed by MPI in New Zealand).
- Challenges with interpretation of the legislation, especially by SMEs. There are lots of 'grey' areas and confusion in food industry (they often lack science background and there are differences in interpretation of risk – a company may estimate something as 'low risk' that FSANZ would class as high risk due to no clearly communicated risk framework at present). There are personal and cultural reasons why people view safety differently and this needs to be recognised and covered.
- Inefficiencies – why replicate things where already other international regulations/approvals that could be used? Companies we work with are

sometimes going into multiple international markets and causes extra work meeting diverse needs where could be more streamlined.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The Impact Analysis document cites several international treaties (e.g. UN declaration of independence of Indigenous people). We believe it would be important to include Nagoya protocol (which talks about genetic resources so would be relevant) and Te Tiriti o Waitangi among these for consideration if language is to be modern and consistent with current context. Noting although Australia and New Zealand are not signatories to Nagoya it still has relevance.

Also there needs to be consideration of "data sovereignty" and "appropriate protection measures" around some of the proposed activities. See Te Kaahui Raraunga (Māori Data governance Model) released in May 2023 (<https://www.kahuiraraunga.io/maoridatagovernance>), e.g. once information about traditional foods are assessed for safety, how will that information be protected, stored and made accessible to ensure appropriate use (these processes need to be thought of in tandem with appropriate IP arrangements)? It would be not always be appropriate to open this up to any business (e.g. due to risk of misappropriation of indigenous resources or knowledge and unfair benefit sharing). Other legislative areas have dealt with this by developing controlled access databases of information or developing committee to approve uses (e.g. NZ Plant Variety Rights Act changes). The USDA also has a system for redacting confidential business information from the public versions of safety assessments. Something similar could be implemented for cultural knowledge.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

We strongly advocate the inclusion of preventable diet-related disease as well as food safety concerns (the later often being the main focus for many in the industry). As stated on page 49: '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.' Need better integration and consideration of the whole food system and the players in it (past 'Road Shows' were valuable for communication and engagement/discussion).

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?

Yes

Additional comments (optional):

The wider perspectives of health, including long term considerations, gels with the Māori world view but also allows a more structured assessment and ensures full consideration of factors considered. It should also allow greater transparency.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

This should help avoid/minimise the 'grey areas' currently faced with interpretation of the legislation. By encompassing more than just 'safety' it should also help with trust and belief in food system (there is currently a lot of scepticism by the consumer – for most the 'safety' of food isn't really questioned, and trust is very high, but the healthiness is questioned a lot more).

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:

In SMEs staff are undertaking multiple roles and do not always have time to understand all the regulations fully and rely on guidance that is often currently lacking.

In some of our work with industry at present there is a lot of confusion and grey areas with opportunity for different interpretations resulting in confusion and non-compliance. The legislation is fragmented with lots of information in various places and not necessarily well connected (users need a high degree of knowledge to know where to find everything and therefore can 'miss' critical information or not be able to find it).

Users need to be able to see the bigger picture and understand reasoning behind the legislation to appropriately use it. Finding ways to for better communication will be hugely beneficial.

Roadshows and forums good and ensuring digital communication, such as webinars.

Provision of lists of experts and even internal FSANZ/enforcement agency contacts that people can go to easily.

There is potential value in case studies, e.g. we have done this recently for the Horticulture NZ Action Plan where we have written a Zespri case study around health claims.

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:

We need genuine intent and engagement in this space - don't want tokenism.

From a Plant & Food Research perspective, new provisions of language change in the Act would better support FSANZ to recognise Indigenous culture and expertise, given our PFR Māori strategy TONO that values Te Tiriti o Waitangi through embracing Te Tiriti-based partnership approaches with Māori. We have strong interests in building robust and meaningful relationships with Māori, as well as becoming trusted research partners with Māori within the food and beverage industry.

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:

In general, the provision of Te Reo Māori language, where appropriate, ought to be included in the Act that recognises Māori culture and expertise connected to the food and beverage industry. The exact language to be used ought to be consulted with Māori.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Some things to consider include: traditional use claims, provenance, Access & Benefit Sharing (look at international initiatives around capturing traditional knowledge such as digital library. e.g. Indian transcripts), Māori data, safety at a holistic level as considered by Māori.

Caveat = if you are writing down, don't want it to be misused and risk of exploitation.

Considerations for provision made for anecdotal evidence.

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:

Importance of capturing not only risk at a population level but also to specific population groups, e.g. Māori due to specific genes carried.

Could mean low risk products pass through the system more easily and this then takes pressure off the whole system. Low risk is often self-regulated

with regulator only having an overview role. Own testing and uploaded onto system. Reduces cost of site visits, etc.
High risk more challenging and needs appropriate measures and correct consultation.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

Table 10 is good.

Needs to be appropriate and in some cases product-based.

Importance of science/evidence base.

Correct consultants should be involved where necessary.

Self-regulation good for low risk within certain parameters (assuming appropriate understanding in industry but that can be achieved through better communication and support).

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Not Answered

Free text box, no character limit:

Provides an easier path for new research and when collaborating with companies taking product concepts to market.

Cost saving.

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:

Yes, as long as from a robust list of well accepted regulators (e.g. EFSA, FDA, Health Canada, etc). Would be much easier for companies we are working with who work across multiple markets.

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:

Time and cost saving.

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:

It makes logical sense, although depends on the definition of a very low risk product (what may be low risk overall for population may be high risk for small subset so it will be important to have some clear way to flag this if necessary).

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:

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Faster change and therefore quicker path for innovation to deliver new products to market.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Yes

Free text box, no character limit:

Opportunity for FSANZ to use enforcement agencies (the ones dealing with industry all the time) - providing feedback to make things more efficient and flexible. They are seeing the grey areas.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

Make it easier working with our food industry clients and less work having to educate them on the basics and remedy problems where they haven't understood they were non-compliant.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Skills-based cross-community representation.
Science understanding where appropriate.
Indigenous input where relevant.
Important to understand the science behind the risk.

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?

Yes

Free text box, no character limit:

A key gap may be written evidence and improved access to traditional knowledge. There are issues around acceptance of traditional use food claims due to the nature of oral language traditions rather than written, with some markets excluding "traditional use" evidence entirely. But the process of capturing this if not conducted with careful consideration, could be viewed as 'repeat colonisation'. Some insights may be gained by looking into initiatives such as the Traditional Knowledge Digital Library (TKDL). They have looked to improving evidence and access to of traditional knowledge by converting Indian transcription into international languages and available on the public domain, therefore making prior art more accessible.

FSANZ talks about speaking with Australia IP and IPONZ about how to ensure IP stays with traditional owners and benefit sharing arrangements and looking at certification schemes – they could look more broadly for exemplars or experts here. The currently legal system may not provide solutions. Recognize sui generis legal approaches are necessary. Protection of knowledge and what people are willing to share (risk of exploitation), and who has the rights to approve that. Products could be on a list but does that mean anyone can then go and use (i.e. without partner or informed consent). Without being well thought through could attract a lot of disagreement. Could list increase value to Māori businesses? But others might have other intentions. Certification schemes haven't always worked well in the past for the protection of Indigenous knowledge - as this recent review outlines. FAO and Alliance of Biodiversity and CIAT 2022. Labelling and certification schemes for Indigenous Peoples' foods – Generating income while protecting and promoting Indigenous Peoples' values. Rome.
<https://doi.org/10.4060/cc0155en>

There needs to be provision for the list to evolve over time. e.g. China's Pharmacopeia and mechanisms behind assessments/additions to do that (much like current assessment of novel foods).

Challenges in Australia around only 'traditional harvest' being considered, not grown as a commercial crop. Care needs to be taken with definitions and what is included.

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?

Yes

Free text box, no character limit:

Critical to develop - relates to above comments (wider view of safety from Māori perspective as considers aspects such as spiritual). Need to be informed by Indigenous people. Indigenous knowledge around processing, rongoā and interactions with medications (e.g. kawakawa + blood thinning medication like aspirin can lead to further blood thinning). Therefore, it is critical to capture risk associated to products like that. FSANZ needs to work closely alongside Indigenous people to inform this.

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:

With fast-paced change in some areas of science this would be beneficial.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

Hauora - Māori philosophy of health and well-being. There are four dimensions of hauora: taha tinana (physical well-being – health), taha hinengaro (mental and emotional well-being – self-confidence), taha whanau (social well-being – self-esteem) and taha wairua (spiritual well-being – personal beliefs).

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:

Yes, would hopefully remove some of challenges for industries we work with.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Positive

Free text box, no character limit:

Faster route to market.
Better understanding/flexibility and hence potentially better compliance.
Remove grey areas so less confusion.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system?
How so?

Yes

Free text box, no character limit:

Why only Australian? The regulations are both Australia and New Zealand therefore should have both surely. Current situation with only the Australian Food Composition Data base being linked to by FSANZ, not the New Zealand Food Composition Database, causes some confusion as some industry think they have to use that and it is not always relevant. It could be better with a collaborative approach.

An issue is that there has been no NZ National Nutrition Survey since 2008/09 so this could present challenges making some assessments (Total Diet Study is about to get underway at least). Need a better approach both sides of the Tasman around data collection (both food composition and dietary intake) to better inform decisions.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Food composition, including branded food data

Dietary intake

Food safety issues, including pesticide residues, etc

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:

Most definitely especially in specialist areas that have limited expertise.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Science expertise

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:

Greater clarity and intention of protection.

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:

Intent

Consequence

Linkages (small companies find this space especially challenging).

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:

Collaboration with enforcement agencies – currently lack of consistency in some areas (in our experience especially with regards health claims).

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Not Answered

Free text box, no character limit:

Correct consultation is critical and we have covered this in some of our earlier comments.

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:

Current differences in enforcement can be problematic. Should be a joint approach.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Yes

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Yes

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Yes

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Yes

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

From the perspective of a research organisation, including working directly with the food industry, there are a few key themes/areas relevant for us:

- Need a more agile/faster process to allow innovation without compromising 'quality' (tarnish our reputation)
- Science/evidence-based decisions
- Robust risk assessment
- Addressing pain points that we have identified from our interactions with industry
- Consistency internationally (acceptance of other regs/decisions as long as robust) but also enforcement across Australia vs NZ
- Whole food system focus
- Recognition of Indigenous knowledge

We are open to further engagement/discussion around these areas.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-09 19:49:11

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Damien Griffante

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Grape and Wine Inc.

Which sector do you represent?

Food Industry

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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:

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Not Answered

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

No

Additional comments (optional):

Australian Grape & Wine does not believe there is a need, nor would there be benefit, to define "public health" within the Act. The remit of FSANZ as outlined in the Act is clear as it relates to protection of "public health and safety" and aspects of food regulation. Public health and safety is a well understood concept that is applied globally based on risk and scientific evidence. There is no need to further define or clarify its meaning within the Act.

The term "public health" refers to much broader social or environmental aspects of community which if included in the Act could significantly alter the scope of FSANZ remit and its work. It not only has potential to broaden the scope of work but in doing so, could directly contravene attempts to improve FSANZ financial sustainability.

This would not be an immaterial change, it would have significant impact and shift in terms of FSANZ scope of work and fundamental change in the organisations purpose. There is no benefit and significant risk associated with defining "public health" within the Act and we therefore do not support it.

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?

Not Answered

Additional comments (optional):

Refer above.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Not Answered

Additional comments (optional):

Refer above.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Not Answered

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Not Answered

Free text box, no character limit:

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Not Answered

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Not Answered

Free text box, no character limit:

There may be some merit in "new pathways" to amending the Australia and New Zealand Food Standard Code (FSC) which allowed for a simplified, less resource intensive amendments where possible. However these options would need to be well understood, retaining some level of industry and government consideration before being implemented and would need to maintain FSANZ current scientific risk-based approach.

For minor changes, a simplified pathways for amendments which pose minimum risk to food health and safety may be something that would support both the food industry and FSANZ in its administration of changes. In a similar manner in which Australia adopts mutual recognition or mutual acceptance principals with other countries standards, provisions could be made to assess adoption of measures applied by other jurisdictions in certain circumstances where risk to health and safety is low. This could include minimal check pathway for very low risk products or for change which are deemed to be immaterial to health and safety aspects.

Conversely, we do not support "automatic recognition" of international standards to support improved efficiency. Again this would present a significant shift in the way Australia manages and determines its food standards codes. Australia and many other countries do not directly adopt international standards, such as Codex, as these are broad guiding standards that cannot consider national or regional variability, consumption patterns or other local factors. For this reason we do not support automatic adoption of international standards as measures are best applied by national governments which are best placed to assess the appropriateness of measure for their 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?

Not Answered

Free text box, no character limit:

Refer above. We do not support automatic recognition of international standards.

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Not Answered

Free text box, no character limit:

Refer above.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Not Answered

Free text box, no character limit:

Refer above

What would be the impact of introducing new pathways to amend food standards for you?

Not Answered

Free text box, no character limit:

Refer above

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Not Answered

Free text box, no character limit:

Refer above

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Not Answered

Free text box, no character limit:

The consequences of such arrangements are not clear at this time. While we appreciate greater flexibility in decision making, delegation of decision-making arrangements could be risky depending on a number of factors. At this time, we do not have a clear view on the appropriateness of these potential changes but are cautious about the potential risks for unintended consequences.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

Refer above

What would be the impact of streamlining decision-making arrangements for you?

Not Answered

Free text box, no character limit:

Refer above

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Refer above

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Not Answered

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Not Answered

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Not Answered

Free text box, no character limit:

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Not Answered

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Not Answered

Free text box, no character limit:

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Not Answered

Free text box, no character limit:

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Not Answered

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Not Answered

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Not Answered

Free text box, no character limit:

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Negative

Free text box, no character limit:

Component 2.3.3 - To generate more sustainable revenue, cost recovery could be expanded for work that benefits industry National food health and safety is the responsibility of federal governments and needs to be adequately resourced and applied to ensure a high level of health and safety for the public. FSANZ should be adequately funded by publicly available government funds. This should include adequate resourcing that provides for the continued fundamental functions of FSANZ moving forward.

In some instances, cost recovery and alternate sources of income may be appropriate options but only when activities go beyond the fundamental functions and responsibility of the organisation.

The Australian grape and wine industry is already heavily levied and currently undergoing a significant economic downturn. We do not support any aspect of "implementation of an industry-wide levy" to support these fundamental functions of government food safety regulation. Nor do we support compulsory fees for all applications on the same basis. These options are not considered viable or necessary in ensuring the long-term viability of 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:

Refer above

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:

Refer above

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Refer above

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Not Answered

Free text box, no character limit:

Refer above

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Not Answered

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

Australian Grape & Wine supports sharing of information arrangements with international partners in seeking harmonization of trade. As an export-oriented industry we are highly supportive of consideration of other regulations and efforts to harmonise when changes are made to the FSC.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

Australian Grape & Wine sees value in supporting FSANZ ability to provide clear interpretation of the FSC. With standards enforced applied at a state level it can often be difficult to get a clear national interpretation of the application of measures of the FSC. This is applicable to specific aspects of the code and would not be appropriate to be applied broadly across the whole FSC but rather on a case-by-case basis. We would support FSANZ working with state-based enforcement agencies in provision of clear interpretation and understanding of specific measures of the FSC as sought by 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?

Not Answered

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

Refer to response to 2.4.6

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

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:

Summary of the wine sector position

As the peak industry body representing the interests of Australian grape and wine producers, Australian Grape & Wine has sought industry input in forming its positions on the review of the Food Standards Australia New Zealand (FSANZ) Act 1991. The following summarises our position on the information provided in the impact assessment paper:

- We do not support, nor do we see any benefit, in clarifying “public health and safety” or defining “public health” within the Food Standards Australia New Zealand Act 1991 (the Act).
- We acknowledge that there may be benefit in considering simplified pathways for change that are considered low risk, however, we do not support the automatic adoption of international standards.
- FSANZ core role of food health and safety regulation needs to be appropriately funded by federal government revenue. While we support seeking alternative funding to ensure sustainability, this should not be levied on industry for providing public health and safety outcomes that are the ultimate responsibility of government.
- We support information sharing and efforts to harmonise and align standards with international trade where appropriate.
- Improved national interpretation, in collaboration with state-based authorities for specific troublesome measures could provide some value

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 06:50:22

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Sally Mackay

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
University of Auckland

Which sector do you represent?

Research/Academic

Other: :
University of Auckland

What country are you responding from?

New Zealand

Other: :
New Zealand

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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 Executive Summary of the IA states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. The main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

New Zealand has one of the highest obesity rates in the OECD for adults and children. According to the Ministry of Health, dietary risk factors, which include overweight/obesity and unhealthy diets are the major contributor to health loss in Aotearoa/New Zealand at 17.5%. Our packaged food supply is predominantly ultra-processed foods (69% of packaged foods). According to the New Zealand Health Survey, many New Zealanders report not consuming enough fruit and vegetables (44.9% of adults eat the recommended amount of fruit, 11.0% of adults eat the recommended amount of vegetables). In

2022/23, 21.3% of children lived in households where food often or sometimes runs out and 14.4% often or sometimes use food grants. Our current food system is not providing many New Zealanders with healthy, affordable and accessible food. The IA fails to acknowledge the very real threat of poor diets, which lead to overweight/obesity, and several diet-related diseases including type-2 diabetes, cardiovascular disease and cancer.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

We do not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. Consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis and no reasoning has been given for this decision. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security. This is particularly important in New Zealand where agriculture is responsible for almost half of greenhouse gas emissions.

Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health. Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use. Food production is destined for collapse if environmental issues are not addressed.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs that food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of New Zealanders and Australians should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
 - food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),
- as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health, including food security and food sustainability, and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns, FOOD SECURITY AND FOOD SUSTAINABILITY.”

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform “There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade.” When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost. I

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors, food security and food sustainability.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that “the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives”. FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with Māori and First Nations people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect Māori and First Nations and ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Recommendation: Specific consultation with Māori and First Nations and people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with Māori and First Nations people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question. The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.-----

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

This question really needs a 'it depends' option.

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.
- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No response

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with Māori and First Nations people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-Māori and non-First Nations peoples.

Not that many traditional foods are not novel foods and therefore would not need to go through an application process.

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:

We suggest FSANZ consult specifically with Māori and First Nations people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of Māori and First Nations people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in Māori and First Nations food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for Māori and First Nations people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact Māori and First Nations people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board

members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

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:

It is difficult to answer this question when there are no details on what a process would look like - so the answer is really 'it depends'. We only support changing the current nomination process to an open market one if it retains the number of public health positions on the board. If nominations are not restricted to the current nominating organisations this could broaden the public health voice. Though there is a risk that an open market process could reduce public health positions on the board, therefore the minimum number of public health positions would need to be retained and that conflicts of interest would need to be declared as there is a real risk that former industry representatives with health backgrounds may qualify.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

This question has not been asked in relation to guardianship of key food safety databases in New Zealand. Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for New Zealanders.

In New Zealand, we are highly concerned about the lack of committed ongoing funding for the NZ Food Composition Database, a key database that underpins food regulatory, nutrition monitoring and informs food policy.

Equally concerning, is the outdated data on food consumption in New Zealand (2002/03 for children and 2008/09 for adults). Despite preparation for a national nutrition survey over the last two years, there is no commitment by government to a survey. There is a danger that this preparation work will need to be repeated if there is a long delay in conducting a survey. The NZ Food Composition Database is an integral part of a food consumption survey.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

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 broader burden of disease.
- Food security data
- Data related to food sustainability, such as greenhouse gas emissions, water use, eutrophication etc.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure Māori and First Nations peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of Māori and First Nations peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with Māori and First Nations groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate Māori and First Nations stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

COSTS – consumers and governments

The Cost Benefit Analysis notes that Option 1 has delivered good public health and trade outcomes, and it has prevented the market failures it was designed to address. Whilst this may be the case for short-term health outcomes and for trade outcomes this is most certainly not the case for long-term health outcomes which have deteriorated over the 30 years in which FSANZ has been in existence – this should be explicitly noted as a cost to governments.

Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments, these include:

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (primarily proposals). This can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study below.
- The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:
 - measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and
 - measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).
- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
- The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases.
- A quantification in the Cost Benefit Analysis of the proportion increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products and their displacement of healthy options, as facilitated by FSANZ within the food reg system.

We disagree with the following costs attributed to consumers:

- ‘Small effect on consumer choice through limitation in range of food products available due to deterrent effect, delays in processing applications’. There is an enormous range of products on the market for consumers to choose from and the vast majority of foods do not need to go through the applications process to enter the market – this cost is negligible at best.
- ‘Reduced consumption on food items due to increased costs from cost recovery initiatives’ – we disagree with the inclusion of this as a cost. With only 17 applications approved each year this is very unlikely and even if costs were to be passed on it is for such an insignificant proportion of the food supply each year this is likely to be negligible, Consumers can also choose other foods to purchase so the passing on of costs in relation to a few products is

unlikely to result in reduced consumption on food items generally.

BENEFITS – consumers and governments

- The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses product safety before they are put on the market are not included in the Cost Benefit Analysis.

BENEFITS – industry

- Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the benefit industry receives from products that enter the market under the 12 applications approved each year.
- Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions.
- We note the benefit noted that expediated pathways provide certainty for business in terms of approval timeframes – this certainty exists without expediated pathways as there is always a timeframe for applications to be processed – this benefit is retained under Option 2 and should be included there also.

BENEFITS – governments

There are benefits to governments of FSANZ:

- ensuring foods are safe
- doing food recalls
- progressing proposals

these should all be included in the Cost Benefit Analysis.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made.

We disagree with the general assumption for public health benefit per proposal/review/application –

- - these are not equal and should not be treated in the same way.

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. A non-labelling example which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on neural tube defects and goitre/iodine deficiency.

- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?

- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Costs and benefits for all impacted stakeholders (industry, consumers, governments and FSANZ) for each of type of FSANZ work should be separately noted (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews and the same for governments, industry and FSANZ) so that costs and benefits for each stakeholder and type of work can be individually assessed and considered for each reform.

The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things). How is this measured and factored into the Cost Benefit Analysis?

Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

CASE STUDY - Pregnancy warning labels on alcohol

The proposal for pregnancy warning labels on alcohol provides a good case study on the economic costs and health impacts of delays in progressing public health proposals in the current food regulatory system.

In October 2018, the Ministerial Forum on Food Regulation agreed that a mandatory standard for pregnancy warning labels on alcohol should be developed and asked FSANZ to develop it as a priority. This work was completed in July 2020 when Ministers accepted a proposed draft standard – meaning that the time to complete the proposal was just under two years.

The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement for Pregnancy Warning Labels on Packaged Alcoholic Beverages (DRIS), published in October 2018. This DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at \$1.18 billion per year in Australia and \$171.12 million per year in New Zealand, with the cost of each individual

case of FASD estimated at \$75 662 (AUD). The DRIS is unable to predict the exact number of cases of FASD that will be prevented as a result of the labelling change, however the analysis concluded that only 183 cases of FASD in Australia per year, representing 1.18% of the total FASD cases per year in Australia, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure the economic cost per year incurred for each year of delay is estimated at \$13.8 million, while the health impact is 183 additional individuals living with FASD.

The IA must include analysis of this type to provide a complete picture of the costs of the current system, even if those costs cannot be precisely determined. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the likely impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels are significantly less likely to be implemented in their current form under the reforms proposed in options 2 and 3, because of the increased importance given to trade and regulatory impact concerns. This brings with it a significant health and economic cost, as outlined above.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

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:

COSTS – consumers and governments

Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments, these include:

- As there are no reforms to ensure proposals are progressed in a more timely manner under Option 2, the same health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (proposals) remain under Option 2. These costs should be included and can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study in response to the Net Benefit question for Option 1 above.

- Assume proposals should be completed within 3 years – each year delay after that should be factored in as a cost to consumers and governments given the health benefits that would have been realised if it were processed efficiently – an analysis should be done of all proposals approved in the past ten years and the average time it took from getting on FSANZ books to being finalised, gazetted and implemented. Any time taken to complete a proposal in excess of 3 years should be considered a delay cost to consumers and governments.

- The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:

- measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and

- measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).

There are no reforms proposed under Option 2 that will address these issues and as such these costs should be included under Option 2 also.

- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards. As there are no time limits proposed for progressing proposals under Option 2, these costs remain and should be included in the Cost Benefit Analysis.

- The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases. There are no reforms proposed under Option 2 to reduce these costs and as such these costs remain under Option 2 and should be included in the Cost Benefit Analysis.

- A quantification in the Cost Benefit Analysis of the proportion increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food reg system.

- The health and economic costs borne by consumers and governments of the risk framework proposed under Option 2 which will result in less scrutiny and will not ensure that all products undergo full safety assessments before they are put on the market should be included in the Cost Benefit Analysis.

-

COSTS – consumers

- A cost is attributed to consumers for industry passing on the industry wide levy proposed under Option 2. A \$2,000 levy imposed on a large business is entirely negligible and it is extremely unlikely this would be passed on to consumers. In the event that it was, \$10m per annum passed on to the adult population of Australians is around 50c/year.

COSTS – FSANZ

- We note the cost attributed to FSANZ under Option 1 'substantial operational costs associated with administering an outdated and inflexible Act (e.g. time involved in assessing proposals through a broadly one-size-fits-all approach with limited ability to draw on international evidence-base)' remains a cost under Option 2 as no reforms are being proposed that will change this for proposals (only for applications) and this should be included as a cost for Option 2.

BENEFITS – industry

- Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the revenue industry receives from products that enter the market under the 12 applications that will continue to be approved each year under Option 2 and the additional 5 that will be approved under Option 2 assumptions.

- Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions, these will continue under Option 2.

- Timeframes for applications will be retained under Option 2 and therefore certainty for business in terms of approval timeframes should be noted as a benefit.

BENEFITS – Governments

There are benefits to governments of FSANZ:

- ensuring foods are safe,
 - doing food recalls
 - progressing proposals
- these should all be included in the Cost Benefit Analysis.
-

We reiterate our comment from above in our response to the question on Net Benefit for Option 1 as the same applies for the Option 2 analysis: We disagree with the general assumption for public health benefit per proposal/review/application – these are not equal and should not be treated in the same way:

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. Non-labelling examples which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on NTDs and goitre/iodine deficiency.
- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?
- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)?
- Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

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Data and expertise is available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

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The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the

absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

In relation to the analysis on proposals / applications / standard reviews specifically:

PROPOSALS

- The IA states that Option 2 will continue to see 3 proposals delivered each year (i.e. no change in the number of proposals) but notes that these will be processed in a more 'timely manner'. The assumptions do not provide a timeframe - this needs to be quantified - as noted our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.

- The IA assumes that resourcing limitations are preventing FSANZ from completing proposals in a timely way; however it is likely that the contentious nature of some proposals (e.g. putting pregnancy warning labels on alcohol) and industry pressure is also a significant factor. These factors should be included in the Cost Benefit Analysis.

- Whilst the majority of proposals have a public health benefit this is not true for all (e.g. added sugar and carb claims on alcohol have been identified by FSANZ as potentially increasing consumption thus harm) - this also needs to be factored in.

-

APPLICATIONS

- We note the Option 2 assumption that processing time for other (i.e. non-low-risk applications) will be 9 months under Option 2. This is the equivalent of the paid applications pathway under Option 1. There is no reform proposed that the legislated timeframe for applications will change other than that the expedited pathway (paid) for applications could be removed - no rationale for the assumption that timeframes for 'other' applications will be reduced from 21 months to 9 months is given. This should be clearly set out and justified.

- Applications are largely for commercial benefit and not public health outcomes- this needs to be reflected in the Cost Benefit Analysis as a benefit to industry.

- It should not be assumed that every application has a consumer benefit. Many applications result in unhealthy food products entering the market, this should be factored in, or if that is not possible with available data, then at least they should be considered neutral and not positive from a public health perspective.

- There is no rationale provided for the assumption that 80% (14/17) of applications will be low risk - this should be clearly articulated.

- There is no factoring in of the costs of introducing a risk based approach to assessing FSANZ's work - Option 2 assumes 14/17 applications a year will be low risk and therefore undergo less oversight and scrutiny by FSANZ - there needs to be an assumption that some things will be incorrectly classified as low risk and will therefore undergo a less rigorous approach resulting in negative outcomes for consumers/governments - costs to consumers/governments as a result should be in the Cost Benefit Analysis.

STANDARD REVIEWS

- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

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

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The IA presents two options as available for consideration - Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

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POLICY PROBLEM 1

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support a negative impact rating of 3 (high) for policy problem 1.

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 3 - majority resolution - for solving Policy Problem 1. We would argue that the rating should be 0 (not-at-all) or 1(low) at best.

Sub-problem 1, Policy Problem 1

- Option1: Option 1 could address Policy Problem 1- the confusion about how FSANZ should consider short-and long-term risks to health when developing food standards is one that sits with stakeholders not FSANZ itself - the FSANZ Board have confirmed FSANZ role in long-term health risks. FSANZ simply needs to communicate this better and has the ability to do so under Option 1. As such this sub-problem has no negative impact.

- Option 2: As above. Whilst the inclusion of a definition may address the unclear definition issue of this sub-component the more important element of this sub-component is 'how' FSANZ should consider short- and long-term risks to health when developing standards. There has been no attempt in Option 2 to include mechanisms for how FSANZ is to do this nor to separate out how FSANZ considers these risks. We would consider there is no resolution of this element of the policy problem.

Sub-problem 2, Policy Problem 1

The solution presented in the IA for the confusion about the factors to which FSANZ has given regard in its decision making is simply communication - this is equally available to FSANZ under Options 1 and 2 and therefore each option should have an equal rating for this sub-problem. There is no resolution of this policy problem under each option as no reforms are proposed.

Sub-problem 3, Policy Problem 1

The proposed changes merely add language into the Act in relation to First Nations and Māori Peoples, much like language already exists in relation to 'public health' and we do not consider that sufficient and genuine engagement and consultation has been conducted with First Nations and Māori Peoples to ensure that these changes are in the best interests of those groups. These words do not in and of themselves result in commitment of government to First Nations and Māori Peoples, and respect for their culture and knowledge. We would consider this a minimal resolution of this policy problem, if any. Acting on the Tier 2 and Tier 3 solutions would make a meaningful difference and we strongly suggest these are included at this stage of the reforms.

POLICY PROBLEM 2

-

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Sub-problem 2 - we do not consider that Option 2 provides any reforms that actually remove barriers for Indigenous foods to be brought to market, it simply is the creation of a list of 'safe' traditional foods. These foods don't need any interaction with the novel foods provisions of the Food Standards Code and therefore the relevant importance and impact is limited. As such there is no resolution of this sub-problem in Option 2 and that ratings given to Options 1 and 2 should be the same.

Sub-problem 3 - Option 2 does not 'require' FSANZ to do any holistic reviews at all so there is no resolution of this sub-problem. Increased resourcing under Option 1 could equally have the same impact on holistic reviews and Options 1 and 2 should therefore be rated the same.

Sub-problem 4 - FSANZ already has the capacity to develop guidelines and Codes of Practice and as there is no suggestion that FSANZ is required to do these under Option 2 it provides no more resolution of this policy problem than Option 1. As such Options 1 and 2 should be rated the same.

POLICY PROBLEM 3

-

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should be 1.5-2 (moderate).

Sub-problem 1 - whilst the addition of additional skills will benefit FSANZ, open market nominations would not result in better, more efficient, effective decision making and we would therefore not rate this sub-problem as completely resolved.

Sub-problem 2 - decreases in funding could be resolved under both Options by changes to substantive funding arrangements to FSANZ. Under Option 2

cost recovery mechanisms could be used to address some of the deficit, this could partially resolve this sub-problem.

POLICY PROBLEM 4

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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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

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- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented; it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

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The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below .

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm. As such each of the following risks should have lower consequence ratings:

- Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.
- FSANZ's organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk
- Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work
- Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.
- 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
- Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
- An industry-wide levy could contribute to regulatory capture
- Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ’s ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

- Identified risk: The FSANZ Act remains out of step with contemporary expectations and obligations to recognise Indigenous culture and expertise.

Consequences and likelihood are actually both minimal (3), given the limited engagement with the Act by stakeholders and the public. Terminology in the Food Standards Code could be updated to recognise Indigenous culture and expertise through routine Code management at any time. Nothing proposed under Option 2 addresses this.

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 1

- Identified risk: FSANZ’s organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk

We do not support the risk rating of major for this risk (see summary above) and recommend this is rated 2 (moderate). We support that the likelihood rating but note that the risk of this continuing under Option 2 remains high as it is not resolved by any of the reforms presented in the IA as there are no mechanisms proposed to ensure the FSANZ better uses its expertise.

- Identified risk: Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work

We disagree that the consequence is high given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. The consequence and likelihood should therefore be rated as minimal/unlikely (3). This risk is not addressed in Option 2.

- Identified risk: Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.

No evidence has been presented that international food companies are choosing not to enter the Australian and New Zealand market due to regulatory burden. Overwhelmingly products do not need to lodge applications to be introduced into this market so any impact of international food companies not entering the market as a result of this is limited in any event. Consequences and likelihood should both be rated minimal (3). Other hypothesised impacts noted are extremely speculative and not supported by evidence.

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- Identified risk: Nomination and appointment processes would continue to be relatively laborious endeavours and perpetuate the risk that the Board will not have the necessary skills to provide effective governance

We disagree that the consequence of this is moderate (2), it is minor (3). It is also not very likely (rating 3 rather than current 1) given current scope and flexibility for appointments.

- 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

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: The Board could be less efficient and well equipped to consider sectoral interests under new nomination arrangements

We support the risk rating for this risk.

- Identified risk: Expanded cost recovery mechanisms borne by industry could create new barriers to entry for businesses seeking to vary food standards, reducing accessibility of the scheme

Cost recovery methods do not inhibit engagement with FSANZ. We note the Cost Benefit Analysis analysis assumes any costs would be passed on to consumers, as such the consequence of this should be low (3 not 2) and the likelihood unlikely (3 not 2). Overwhelmingly products do not need to lodge applications to be introduced into the Australian and New Zealand market so any impact of cost recovery mechanisms linked to applications is limited in any event.

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations hence the likelihood of this risk is unlikely (3).

- Identified risk: An industry-wide levy could contribute to regulatory capture

Any cost recovery mechanism risks regulatory capture, not just a levy, so this is a risk for all cost recovery mechanisms proposed in the IA. Cost recovery mechanisms that expedite applications (as under Option 1) are much more risky, as are paid applications as a whole (as under Option 2) as this only benefits large organisations who can afford to regularly participate in the application process. As such, the consequence and likelihood of this reform should be considered as moderate (2) at most.

- Identified risk: Imposing a food recall coordination levy could increase the risk of non-engagement with FSANZ by jurisdictional enforcement agencies, resulting in less well managed foodborne risks

We do not agree that the consequence of this is major and this risk should be rated (2-3), food recall is currently managed more than adequately and any indication that there is a serious widespread incident will be acted on immediately. We also think this risk is unlikely (3) as no jurisdiction will allow harm to come to people, industry and government from inaction.

Theme: improving system agility

Option 1

- Identified risk: Efforts to align policy and regulatory work across the system will continue to be frustrated

We support the rating for this risk but note that all reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. The likelihood for stakeholder confusion only remains high if FSANZ and FMM/FRSC continue to not communicate priorities and needs effectively.

- Identified risk: Inconsistencies in interpretation and enforcement will continue to be an issue, particularly for Australian businesses and enforcement agencies, generating undue regulatory burden

Consequences and likelihood demonstrably minor given cross-country penetration of products/companies and necessary jurisdictional-based approach to enforcement. We note that reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in

nature. We propose ratings of consequence (3), likelihood (2).

Option 2

- Identified risk: Greater collaboration across the system could put at risk FSANZ's independence, if not done well

Collaboration across the system is already being undertaken with adequate checks and balances. The reforms proposed under Option 2 are available to FSANZ under Option 1. As such we suggest a likelihood rating of 1 as this collaboration is sure to continue.

- Identified risk: Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The consequence of this would not be dissimilar to current arrangements and we suggest a rating of 3. This is very likely however and should have a likelihood rating of 1 - this has been demonstrated by slow progress on combining jurisdictional databases and slow uptake of Branded Food Database and HSR 5-year review.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

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Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

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Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the Act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture). The regulatory system needs to enable food sovereignty, people have a right to have access to healthy and culturally appropriate food, produced through ecologically sound and sustainable methods, defining their own food and agriculture systems. The New Zealand economy is very dependent on agriculture so climate impacts are likely to severely impact the economy and food security. Many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. New Zealand is highly

FSANZ's role in the food supply

We note that despite noting that the Food Standards Code 'provides ... standards that cover the entire supply chain from 'paddock to plate', the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. We note further that the IA sets

out clearly what the Act is designed to do, it is designed to:

- protect the public good by reducing foodborne illness and promoting population health:

The reforms in Option 2 of the IA do not enable FSANZ to protect the public good by promoting population health.

- address negative externalities, such as where the actions of some stakeholder groups create costs or harm for other people, within these costs being paid for by the responsible parties:

The reforms in Option 2 will perpetuate the negative externalities created by the actions of industry and resulting in costs and harms to consumers and governments - these costs will continue to be paid for by consumers and governments and not industry under the proposed reforms.

- address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production:

The reforms in Option 2 of the IA do not enable FSANZ to address information asymmetries any better than under Option 1.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives - to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 07:57:14

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Belinda Castles

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Consumer NZ

Which sector do you represent?

Consumer Organisation

Other: :

Consumer NZ

What country are you responding from?

New Zealand

Other: :

New Zealand

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

[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:

Consumer NZ continues to be concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft 2021 Regulatory Impact Statement, this has not been well documented. Little detail has been provided to explain the processes, inputs and assumptions underpinning problem identification and prioritisation.

We believe the current methodology is flawed as it fails to identify a key policy problem - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. These problems were raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021).

Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step, it is insufficient to deal with the actual policy problem. As a result,

the IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including the risk-based framework and the cost benefit analysis. To help address this, we support the proposal put forward by The George Institute for Global Health (and supported by New Zealand and Australia public health organisations) that a Public Health Test be incorporated into the Act.

Policy problem 2 also fails to adequately address the unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. This approach presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged in the IA that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Therefore, we do not agree that Options 1 and 2 should be considered as two independent options. There is considerable overlap between both options and many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we request that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to “address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people” and “address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production”. Therefore, the Act should include responsibility for the food system’s security and vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand’s national and international obligations under the Paris Agreement are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources including internal expertise, FSANZ can be an effective agency to respond to the food system’s regulatory needs.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;

Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews;

Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently very well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

These sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not relate to the primary objective of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly support the proposal of New Zealand and Australian public health organisations for the inclusion of a Public Health Test in the Act to address this

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ's role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Yes

Free text box, no character limit:

Consumer NZ is supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as proposed in the IA will not itself ensure that the significant gap between the objectives of the Act, and the practical implementation of the Act in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

Consumer supports the Public Health Test as proposed by The George Institute for Global Health (and supported by New Zealand and Australian public health organisations) in their submission.

The PUBLIC HEALTH TEST

Priority setting should consider:

The burden of disease attributable to the food supply

Estimated benefit of change to the food supply from the work under consideration.

Decisions should:

Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;

Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines;

Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease;

Assess the impact on the burden of disease attributable to the food system;

Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;

Assess the cumulative impacts of the introduction of new foods on public health outcomes;

Reduce availability of unhealthy foods targeted at children.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.----

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

No

Free text box, no character limit:

Food standards should only be harmonised with international standards where those standards meet the Public Health Test

Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest independent bodies like the World Health Organization.

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the impact of introducing new pathways to amend food standards for you?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements.

What would be the impact of streamlining decision-making arrangements for you?

Prefer not to respond / I don't know

Free text box, no character limit:

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We recommend FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a time-frame of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and risk public safety, health and confidence in the food system.

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to "deliver three proposals per year". In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. We strongly oppose any decision that may reduce the number of public health and consumer positions on the board. This also helps ensure the management of real and perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry companies to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

Consumer NZ supports the recommendation proposed by The George Institute for Global Health.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms.

Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ's purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportunity to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 09:16:55

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Fiona Fleming

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Institute of Food Science and Technology

Which sector do you represent?

Other (please specify)

Other: :
Not-for-profit organisation representing food industry professionals working in all facets of the food industry

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:

Issues with the current methodology should be raised by the stakeholders in the system, and not by perceptions from those outside. We need to know whether there are real problems or just perceived problems due to lack of knowledge, good communication or understanding by some stakeholders.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

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:

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?

Prefer not to respond / I don't know

Additional comments (optional):

AIFST note that FSANZ is a regulator and does not develop policy guidance.

AIFST questions if there is a problem or rather an issue with stakeholders not understanding the role of FSANZ and whether altering definitions would reduce the "confusion".

It is possible the issues arise from some stakeholders wanting outcomes which may not be attainable through regulation. Working to improve the definitions is unlikely to resolve this issue, however the discussions could help to improve understanding of what is and what is not possible.

AIFST would support clarification of a definition of public health and safety within the Act only as it applies in the context of developing food regulation.

The drafting must acknowledge the importance of sound and robust science across all disciplines underpinning public health and safety.

If a definition was to be amended in the Act, AIFST strongly requests there be consultation on any proposed drafting.

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?

Not Answered

Additional comments (optional):

AIFST fully supports the independence of FSANZ, and when setting standards, ensuring the best science and evidence always underpins decisions.

Generally, stakeholder would expect that FSANZ's approach is already in accord with the Ministerial policy guidelines – therefore the legislative change is unlikely to have a material impact, but rather improve clarity of interpretation.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Neutral

Additional comments (optional):

AIFST does not expect a clarification to the definition of 'protection of public health and safety' within the Act to make a material difference.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Not Answered

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Comment on previous question:

AIFST supports greater transparency in communication pertaining to development of food regulatory measures.

AIFST considers it is important to raise awareness that Ministerial Policy Guidance is in place and FSANZ has regard to this guidance when developing food regulatory measures.

Raising awareness of the policy guidance is not just the role of FSANZ, the Food Regulation Secretariat should also play a role in informing food industry stakeholders of the existence of policy guidance, how the guidance is developed and its role in development of food regulation.

Once again, the role of science in underpinning policy guidance must be acknowledged.

Additional transparency in how FSANZ interprets the policy guidance in development of regulations and standards would be welcomed.

Comment on this question:

When a communiqué is put out the relevant policy guidance should be clearly referenced and what has and has not been achieved in developing the regulation with relevant reasoning.

For example, in the recent publication of Proposal 1062 on added sugar labelling, it was unclear how the ministerial guidance was considered in the significant departure in regulatory proposal from the initial draft of the standard to the final proposal as gazetted.

In trying to comply with the guidance, the problem of definition of added sugar is a major issue as food ingredients naturally have varying amounts of sugar and are used for different purposes, so it is problematic to define which should be included in the definition. This highlights the difficulty around consumer perceptions and practicality of creating a measurable and hence enforceable standard.

This resulted in significant concern that due process had not been followed and will ultimately result in significant additional relabelling work in within the food industry.

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:

AIFST has no comment, this is a question for the indigenous people and those with knowledge of indigenous culture.

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:

AIFST has no comment, this is a question for the indigenous people and those with knowledge of indigenous culture.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

No

Free text box, no character limit:

No further comments.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Not Answered

Free text box, no character limit:

AIFST is supportive of the introduction of a risk-based framework to support FSANZ. However, the example provided in the consultation paper does need further refinement.

AIFST requests that further consultation is undertaken on the framework prior to finalising. Regulations should be outcome based with the focus on ensuring safe food.

Regulation should be commensurate with the identified risk(s) and this can only be achieved through a sound, science based, risk assessment processes.

A risk-based framework, cognisant of the most up to date and international science-based evidence to support FSANZ in handling changes to the Food Standards Code and would also make the organisation more efficient and provide faster response thereby enabling opportunities to be realised in a

timely manner.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

There are many risk assessment frameworks available to FSANZ – basic HACCP principles are widely used across the food industry incorporating severity of risk and likelihood of risk and should be considered.

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:

FSANZ is already applying a risk-based framework – the focus of this review should be on ensuring regulation is commensurate with the identified risk(s) and this can only be achieved through sound, science-based risk assessment processes.

Further refinement of the risk-based framework and expansion of the knowledge base more globally would contribute to proportionate effort and process being applied to the level of risk identified.

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:

FSANZ should be enabled to accept risk assessments from international jurisdictions provided the context in which each of those assessments is made is taken into consideration – that is, that the background to the assessments is available for scrutiny and the quality of the work is of sufficient equivalence to work that would otherwise be conducted locally. Where there is acceptance, demands on FSANZ resources would be reduced and the regulations could be progressed faster.

In a high performing system, each step in a project is assessed after the event to ascertain whether that step actually added value or not. Types of work which regularly add no value could then be grouped and managed to delete that unneeded step. Note that some steps in the process may be for information sharing only. Senior management would need to report which steps are not needed and be prepared to justify their decisions. This is all with the aim of best utilisation of resources and timeliness of project delivery.

Within the context of international-equivalency, replication of work by FSANZ that has already been well researched and reviewed is wasteful of resources and inefficient. Under the principals of a high performing system, where possible, these should be eliminated.

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:

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:

Yes, within a robust framework that defines criteria for the level of risk and how it is assessed within the system.

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:

Yes, the principles must be science based.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Reduce effort and time frames for the broader food industry to support innovation.

Incentivise innovation.

Supporting innovation in the Australian food industry will support food science and food scientists role and future. This would also be a good outcome for consumer choice and food availability.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

FSANZ should take learnings from other regulatory bodies – there is no point reinventing the wheel.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

AIFST supports enablement of FSANZ to optimise efficiency of its functions and notes good governance principles require robust delegation policies and processes.

Delegation of decisions to the appropriate level based on an established, transparent, and agreed delegation of authority and as long as those decisions are documented and ratified is a key step in making a process efficient. It usually means that those decisions are timelier. Factors to be considered in establishment of the delegation of authority are what is the likely amount of impact of that decision on either the population or that portion of the population most likely to be affected. The person delegating the responsibility needs to have confidence in the ability of the delegate to make the correct decision.

Delegation of decision making should not, however, dilute governance obligations of the FSANZ Board or the Food Ministers.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

A key factor for consideration is the skills and knowledge of the delegate. Additionally, the level of risk, based on factors such as (but not limited to): category of food/ chemical; complexity of change; impact on food safety, public health, and trade; history of similar use in like-population; and recognition by other authorities.

An alternative consideration is to provide FSANZ with better tools – eg: no requirement to do a full risk assessment on an enzyme which has already been approved in other markets.

Focus on the systems and processes and tools, not so much about the delegation.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

Ideally, reduced effort to prepare applications and improved timeframes for outcomes. This would also support innovation by industry.

Supporting innovation in the Australian food industry will support food science and food scientists' roles and future.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Skills and knowledge of alternative person.

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:

AIFST consider that more information is required to provide a considered response.
This currently seems like a resource drain on FSANZ.

An initial step in this process is to consider the completeness of knowledge of indigenous foods.

AIFST defers to indigenous people and those with further knowledge of indigenous foods and culture.

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:

Further guidance materials will not be useful in the absence of a clear risk assessment process and path 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:

AIFST supports the provision of adequate resources for FSANZ to optimise efficiency of its functions. Best practice indicates that reviews ought to have criteria-based triggers to ensure effort is applied effectively; has a clear purpose and is outcome focused.

However, regular holistic reviews of standards do not necessarily lead to better outcomes. The last major review was carried out to make the Code more robust from a legal challenge point of view but has made it a lot more complicated for industry to check for compliance, particularly amongst the SME sectors.

FSANZ should be funded to perform its role in a robust and effective way with sufficient resourcing to deliver its performance metrics and outputs on an ongoing basis.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

To drive more holistic consideration of food standards decision-making and prioritisation of standards development should be more transparent noting who is consulted and how decisions are made.

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:

AIFST supports the use of Codes of Practice and/or Guidelines to support the implementation of the Food Standards Code – not in place of Standards which provide science-based framework for regulations. Importantly, the purpose and hierarchy (i.e., legal standing/ enforceability) of any such documents must be clearly defined and understood by all stakeholders.

AIFST question the statement 'to address issues that do not warrant the time and resources required to develop or vary a standard' – surely this is the role of FSANZ – the agency needs to be adequately resourced – they should not have to choose or do a less than thorough job. Codes of practice have been useful in the past but were also removed due to their legal status being queried. The legal status would need to be addressed.

Need to be clear on hierarchy – code of practice and guidelines will always be subservient to regulation.

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:

The following are examples of Codes/Guides developed by the food industry:

- Code of practice on wholegrain claims
- Food Industry Guide to Allergen Management and Labelling

These are examples of voluntary code of practice being complementing regulation.

Best practice regulation principles dictate minimum burden for the required effect/outcome.

AIFST suggests that where an Australian Standard already exists, i.e. some primary production, it may be appropriate for a Code of Practice to replace a Standard. However, the legal standing/ enforceability of any such document must be clearly defined and understood by all stakeholders.

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:

Code of Practice or guidelines could be delegated to a low to moderate level within a risk framework.

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 already examples of such a practice in industry – as noted above.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Codes of Practice and Guidelines must be broadly acknowledged and adopted by the users and stakeholders and must be maintained with up-to-date information or risk creating more uncertainty, inconsistency, and confusion - these should be tools to create further clarity.

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:

Yes, this would be the aim and should already be in place following best practice governance processes.

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:

Nomination process should follow current best practice governance processes with a focus on achieving a skills-based board.

AIFST values the importance of maintaining food science technical knowledge as part of the skillset for FSANZ Board.

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:

This is currently the only route available to companies to support innovation in a known timeframe – such a move could adversely affect the incentive for companies to innovate in the ANZ market.

If the option for applications to be expedited were removed, then there is no incentive to pay for them, and opportunities would be lost.

Further, it is questionable that this change would substantially address workload prioritisation issues – which is fundamentally a resourcing problem.

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:

AIFST does not support a levy imposed on industry to support the operation of FSANZ.

Any additional cost imposed on the food industry will potentially divert budgeted funds within businesses away from innovation supporting new products and investment in research and development.

There could be unintended consequences such as:

- Reduced funding available to support research and development within companies and between companies and research providers such as universities.
- Reduced investment in food scientists due to reduced investment in innovation.
- Offshoring of R&D

Imposing an industry -wide levy would be expensive to manage, implement and police given the diverse nature of the industry and the difficulty of deciding which part of the industry a particular business fits in. This would generally have a negative impact. Current industry groups which do manage a levy of their members do so as they are able to justify the expenditure of that levy.

The food industry is highly fragmented so being able to provide tangible benefits to all contributors would be a tough challenge and would distract from the primary purpose.

No levy collection system currently exists – how would this be implemented fairly without creating more work for both government and industry?

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:

AIFST does not support the implementation of an industry-wide levy.

AIFST does not envisage a system that could be fairly and consistently applied nor feasible to administer. The highly complex and varied nature of the agri-food industry poses an administrative impracticality that would almost certainly see the cost of administration outweigh any benefit.

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:

No levy.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Reduction in applications and negative impact on innovation both within Australia and for overseas companies investing in Australia.

This could also have flow on effects to universities and other organisations providing research and development facilities. The number of applications annually is not sufficient number that fees would significantly increase FSANZ resources. Mandatory fees will also rightly so, increase applicants expectations on service delivery (fee for service).

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:

FSANZ needs to be resourced to focus on their core business and not be distracted by attempting to generate income to support its fundamental 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?

No

Free text box, no character limit:

AIFST does not support the implementation of an industry-wide levy.

A levy is inappropriate as this means that the whole industry bears the direct cost of a problem, rather than the perpetrators. The broader food industry already suffers reputational loss when these incidents occur.

A levy is also a disincentive to report an issue to the detriment and regard of the current state of health and safety of our food supply.

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:

AIFST does not support the implementation of an industry-wide levy.

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

No comment.

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:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

No comment.

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

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:

No comment.

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:

This should already be in place.

Good project management practice is to have a round table discussion between the management group (in this case FMM) which agrees the priority of each project, and the project development group (FSANZ) which provides the funding and other resources available to implement the projects. (Obviously funding associated with particular projects, whether they be from industry, or a jurisdiction, are funded financially).

The discussion then reviews the priorities of those projects near the cut-offline of resourcing. At the end of discussion, the management group must either support the decision about what will not proceed, or investigate other specific resources (funding, staff, etc) to allow an otherwise unfunded project to go ahead. Such a process exposes and therefore clarifies the purpose, and impact of each of the projects as well as the capability of the development group to actually deliver the required outcome. (By default, it exposes what the project team may not be able to achieve and therefore require a solution outside the scope of the project development group). Periodic reviews allow any change of circumstances to alter priorities and therefore active projects.

Factors to be taken into consideration for project priority should include, clarity of project goal, likely successful outcome of a project, resources required for the project, etc.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

This should already be in place. Any periodic joint agenda-setting between FSANZ and FMM should consider all work current and proposed from a perspective of overall goals, resources, and timing. Where important work is deprioritised simply because of funding an avenue for additional funding should be forthcoming. The planning process should be transparent and equitable to all stakeholders.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

It would be helpful for all work done by FSANZ and the FMM be coordinated and aligned through a National Food Plan and a Minister for Food. The implementation of a Minister for Food and a National Food Plan is a recommendation of the House of Representatives Standing Committee on Agriculture Inquiry into food security in Australia.

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:

Improved collaboration comes with organisations getting together and discussing what they each believe their core business is, what they need from the other organisations in order to do their job properly, and then to look at and try to resolve the gaps or the disconnects. In large organisations this is a common practice to improve effectiveness of all parties.

In the context of the engagement between FSANZ and FRSC it would be helpful for all work to be aligned to a national food plan under the auspices of a Minister for food. The implementation of a Minister for Food and a National Food Plan is a recommendation of the House of Representatives Standing Committee on Agriculture Inquiry into food security in Australia.

The FRSC work agenda should be more visible. We often don't know work is being undertaken until it has reached outcomes.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Improved collaboration could be achieved through the auspices of a National Food Plan and Minister for Food.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system?
How so?

Prefer not to respond / I don't know

Free text box, no character limit:

AIFST questions which databases would be in scope for this action?

Database custodian is a very generic statement. It needs more definition to be discussed appropriately.

Current databases seem to be biased towards packaged goods and do not take into consideration total food supply. A database to assist with managing food security would be of a different scale and FSANZ may not be the appropriate place for this to reside, given existing resource constraints.

If this was to happen, the databases must be clearly relevant to FSANZ role and scope of operation. There must also be processes to ensure the information is kept up to date, underpinned by sound science and shared in a timely manner with all stakeholders at no cost.

Examples:

- Failed food reports.
- FSANZ allergen recalls information.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

As per examples above.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

Yes, absolutely – this should already be happening.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

No comment.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

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 FMM.

It should be noted that jurisdictions will always retain the authority to interpret standards and their own 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.

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:

A statement of intent should be a concise statement that outlines the purposes, objectives, of the standard and may include reflections on the references and insights that the standard draws from and the intentions and directed outcomes for relevant stakeholders.

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:

Yes, this would assist to support consistent implementation of regulations by food companies.

Resourcing FSANZ to develop, update and maintain industry guidelines should also include the ability to track what is working and what is not working, namely measuring how well the guidelines are actually working.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

To ensure alignment with jurisdiction stakeholders it is of utmost important that FSANZ collaborate with jurisdictional enforcement agencies to improve inconsistency of interpretation and enforcement of food standards.

Jurisdictions have a key part to play in the collaboration i.e., must be willing to compromise for an aligned outcome.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

No 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?

Not Answered

Free text box, no character limit:

There is a significant opportunity cost of lost innovation initiatives due to the cost of navigating the regulatory landscape.

AIFST is not in a position to quantify this figure.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

No comment.

What are the current delay costs to industry?

Free text box, no character limit:

AIFST believe that effective and efficient regulation and a regulatory process will drive the industry.

Likewise, the corollary will result in delays and increased costs.

However, AIFST is a member based pre-competitive science education and advocacy organisation and is not a position to quantify this figure.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Based on the review paper under option 2, FSANZ would receive AUD \$40 million (NZD \$42.8 million) per year in funding, an increase of AUD \$20.5 million. Additional funding is welcomed by the AIFST to support the important work of FSANZ.

The paper has noted that option 2 results in benefits of AUD \$726.3 million (NZD \$777.2 million) over ten years and are driven by two factors: increased public health benefits and market access for Aboriginal, Torres Strait Islander and Māori foods.

AIFST believes additional benefits to the broader food industry and education sector will be driven by a more efficient and effective regulatory network.

We believe that effective and efficient regulation and a regulatory process will drive the industry.

However, AIFST is a member based pre-competitive science education and advocacy organisation and is not a position to quantify a monetary benefit.

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:

However, AIFST is a member based pre-competitive science education and advocacy organisation and is not a position to quantify a monetary benefit.

Any other comments regarding the Option 2 information in the Net Benefit section?

No

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Yes

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

The risks as noted are appropriate.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

The risks as noted are appropriate.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

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:

In October 2020, the AIFST was commissioned by the Page Research Centre (PRC) to deliver a paper discussing the potential to grow Australia's food manufacturing sector and proposing focus areas to support this growth.

AIFST worked with RDS Partners to deliver a report which synthesised current key reports related to the future of Australia's agricultural and food production system with a series of conversations with 26 industry leaders, scientists, and stakeholders deeply embedded in the sector.

The resulting report, Exploring the growth potential of Australia's food manufacturing sector: a new narrative for Australia's agrifood system, published in January 2021, provides the basis for the AIFST submission to this inquiry.

The report presented a series of recommendations arising from our review of contemporary information and from our discussions with industry experts. While priorities will change as the operating environment also inevitably changes, these recommendations point to some key activities that will help governments develop a clearer picture about what their food policy is and how they are going to support it.

The main recommendation coming out of the report was:

The AIFST calls upon the Government to urgently work with food system stakeholders to establish an industry-led, food system strategic advisory body, chaired at the Ministerial level, to develop a National Food Plan.

The recommended industry-led advisory body would be responsible, amongst many other things, for reviewing the recommendations in this and contemporary reports, and for developing and delivering against its own priorities.

There was a strong call for a well-coordinated and resourced national food system plan and strategy covering what, how and why we grow, harvest, store, value add, market, regulate and export our agricultural, aquacultural and wild harvest primary products and to be rid of the siloed, often piecemeal ways in which these activities are designed and delivered.

In short, we must view and integrate all these largely disparate activities under the auspices of a single, national food system. We need to decide what that system should do – what success looks like – and then design policies and effective actions to achieve that vision.

If the Australian food system is to be positioned to take advantage of the huge opportunities foreseen by our experts, and to mitigate the threats, a serious, nationally coordinated approach to food must occur.

A nationally coordinated approach to food needs to be prioritised so that it is led by industry with true commitment, collaboration, and support from the highest levels of government.

This recommendation is important in the context of this review of the FSANZ Act – providing a 'paddock to plate' view of the agri-food industry in Australia.

A full copy of the Exploring the growth potential of Australia's food manufacturing sector: a new narrative for Australia's agrifood system can be found here: <https://www.aifst.asn.au/Research-Papers>

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 11:56:32

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Sally Witchalls

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Medical Association

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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 Executive Summary of the Impact Analysis (IA) states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. The AMA believes that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all, and as a result the methodology completely fails to factor this in.

The AMA remains concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, the updates have not been well documented. The AMA is concerned that little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation to stakeholders more broadly.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021).

Current methodology as it relates to policy problem 1 and 2

The current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step, the AMA believes it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this the AMA proposes that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The AMA does not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via the Impact Analysis.

This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the unique opportunity to play an important role in ensuring Australia and New Zealand's national and international climate obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, The AMA believes that FSANZ can be an effective agency to respond to the regulatory needs that food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

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 AMA recommends that the sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

The AMA strongly disagrees that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- those food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health. Therefore they should not

have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear.

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible.

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. The AMA also recommends that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient.

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

The AMA supports the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

The AMA is concerned that missing from the IA and the reform options is 'how' public health and safety will be better addressed. Simply adding a definition will not reduce confusion about the processes that FSANZ will use to consider long-term risks to health when developing food standards. The AMA strongly recommends the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

The AMA also recommends that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders. We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

The AMA supports the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, and the diet-related risk factors for them, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No, the AMA does not believe this clarification will materially impact the work of FSANZ. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

The AMA notes the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. The AMA does not agree with this inclusion. The AMA strongly disagrees that

confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

The AMA recommends that The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

The AMA believes that legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

The AMA strongly suggests that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

The AMA notes that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

The AMA recommends that The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

I don't know.

The AMA is supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. 1.3) and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

The AMA notes the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

The AMA notes that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

The AMA recommends that specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

The AMA suggests that FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. The AMA recommends that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health, as contemplated in the IA, will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the FSANZ Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards, to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, the AMA strongly suggests that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities, and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating, and adopting food standards.

The AMA strongly supports the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below:

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

The AMA also wishes to specifically mention the importance of recognising the impact that work of FSANZ has on children's health. Nutrition affects human health, via epigenetic modifications, from conception, children are a particularly vulnerable group and deserve protection. Children deserve special consideration in relation to assessment of long-term benefits and risks to health when developing food standards. It should be a requirement that the impact of all food regulatory measures on children be considered, as the United Nations suggests under the Convention on the Rights of the Child, especially as it relates to the right to a healthy food environment (see: <https://www.unicef.org/media/96101/file/Protecting-Childrens-Right-Healthy-Food-Environment.pdf>).

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question, as the IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means the AMA are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

The AMA has concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

The AMA would strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed.

Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

The AMA recommends that the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

The AMA suggests that the impact of food regulations on children be a specific criterion to be considered in a risk framework. Children should be explicitly considered in relation to assessment of long-term benefits and risks to health when developing food standards, due to the preventive ability of food regulations early in life, having the ability to impact the life-long health outcomes of Australian and New Zealand populations.

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:

I don't know.

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. The AMA thinks there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

- The IA states that the determinations of 'overseas bodies' could be adopted, the AMA supports this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process, and it is unclear what these processes would be. The AMA suggests that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

The AMA believes that allowing FSANZ to create new pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. The AMA wishes to note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

The AMA, and public health and consumer representatives, would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, the AMA also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

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:

The AMA does not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The AMA understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

I don't know.

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

The AMA suggests FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

The AMA notes that without meaningful consultation there is a real risk of the 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?

Prefer not to respond / I don't know

Free text box, no character limit:

I don't know.

The AMA suggests FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

The AMA suggests the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). The AMA recommends that all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. The AMA recommends a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

The AMA recommends that the Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. The AMA does not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and the AMA does not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

The AMA suggests that timeframes for proposals should be considered in component 2.2.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a timelier manner.

The AMA strongly recommends that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. The AMA recommends a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

The AMA recommends a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

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 AMA supports the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

The AMA does not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

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:

The AMA notes that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3. The AMA recommends that the Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

The AMA supports that this levy should only be applied to the largest food businesses, and supports the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

The AMA does not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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 AMA does not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

Prefer not to respond.

The AMA supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

No

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

The AMA supports this and strongly encourage that this database be publicly available. Data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured as a step of maintaining this database.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

The AMA recommends the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health. 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 broader burden of disease.

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 AMA supports the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards, which the AMA opposes. Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

I don't know.

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

The AMA supports the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. The AMA recommends a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

The AMA is supportive enhanced collaboration between FSANZ and jurisdictional enforcement agencies, particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

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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:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions,

even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. The AMA strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs, and benefits to consumers from proposals and costs and benefits to consumers from standards reviews)
- these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

The AMA recommends that the Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

The AMA does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal and Torres Strait Islander, and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

The AMA does not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. The AMA note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. The AMA does not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. The AMA recommends a significant effort be dedicated to identifying and engaging with these experts and organisations.

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:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. The AMA strongly suggests that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs, and benefits to consumers from proposals and costs and benefits to consumers from standards reviews)
- these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. The AMA recommends a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits – the AMA does not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews, and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, the AMA recommends that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

The AMA strongly disagrees that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

The AMA notes that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best. Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best. Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. The AMA strongly recommends that each component is assessed separately. This is particularly important as not all components will necessarily be implemented; it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.

- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.

- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.

- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ’s organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. The AMA suggests that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm. The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in

which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ. The AMA notes that many of the risks found under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not professionally managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ’s ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. The AMA strongly disagrees that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups. The AMA agrees that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of Aboriginal, Torres Strait Islander and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst Aboriginal, Torres Strait islander and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

The AMA agrees that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

The AMA agrees that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

The AMA strongly disagrees that the consequence of this is only moderate minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

The AMA supports the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

The AMA strongly disagrees that the consequence of this risk is major (1), and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed. The AMA strongly disagrees that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. The AMA recommends the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations; hence the likelihood of this risk is unlikely (3).

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

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Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. The AMA strongly suggests that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. The AMA acknowledges that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable, and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health, and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

The AMA wishes to highlight that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

The AMA notes that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

The AMA disagrees with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and

the options to solve these has changed dramatically since the RIS was published for consultation in 2021” and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. The AMA remains concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and the AMA strongly recommends that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

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SUBMISSION

Tuesday, 9 April 2024

AMA Submission to Review of the Food Standards Australia New Zealand Act 1991- Impact Analysis

Submitted via survey: fsanzactreview@health.gov.au

Introduction

The AMA is pleased to make a submission into the Review of the Food Standards Australia New Zealand Act 1991 Impact Analysis.

The FSANZ Act Review commenced in July 2020, and is a comprehensive examination of the effectiveness of the FSANZ Act and the associated operations and responsibilities of Food Standards Australia New Zealand (FSANZ). The FSANZ Act is Australian legislation and underpins the Australia New Zealand Joint Food Regulatory System within which New Zealand participates as a partner under the bilateral Food Treaty.

Previously, the AMA has engaged with the review of the FSANZ Act, in a [submission](#) to the draft Regulatory Impact Statement in 2021, and subsequent consultation sessions with the consultancy firm engaged in the review, and the Australian Department of Health and Aged Care.

Through this work, the FSANZ Act Review has now identified 27 concepts across four themes for further investigation. These concepts have been consolidated into 20 components in the Impact Analysis due to alignment of several concepts and for easier analysis. The Impact Analysis outlines the cumulative costs and benefits of these components. Each of the 20 components are being considered individually, and it is expected that the final proposal considered by Food Ministers will be a combination of different components within the four themes. The overall cost benefit will depend on components considered.

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

The Executive Summary of the Impact Analysis (IA) states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. The AMA believes that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all, and as a result the methodology completely fails to factor this in.

The AMA remains concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, the updates have not been well documented. The AMA is concerned that little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation to stakeholders more broadly.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021).

Current methodology as it relates to policy problem 1 and 2

The current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step, the AMA believes it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this the AMA proposes that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The AMA does not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under

Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

As highlighted in Section 3, the Act is designed to “address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people” and “address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production”. The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via the Impact Analysis.

This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the unique opportunity to play an important role in ensuring Australia and New Zealand's national and international climate obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, The AMA believes that FSANZ can be an effective agency to respond to the regulatory needs that food security requires.

Section 3 - The problems to solve (Ratings)

The questions on this page refer to the ratings listed in the Impact Analysis from page 30.

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

- Yes**
- No**
- Prefer not to respond/ I don't know**

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification.

The AMA recommends that the sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews;

- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

The AMA strongly disagrees that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- those food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health. Therefore they should not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear.

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible.

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. The AMA also recommends that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient.

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

The AMA supports the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1 relates to the *Purpose and objectives of FSANZ*. This section contains questions for Components 2.1.1 to 2.1.3 on pages 49 to 50.

Component 2.1.1

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**
- No**
- Prefer not to respond/ I don't know**

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

The AMA is concerned that missing from the IA and the reform options is 'how' public health and safety will be better addressed. Simply adding a definition will not reduce confusion about the processes that FSANZ will use to consider long-term risks to health when developing food standards. The AMA strongly recommends the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

The AMA also recommends that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders. We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

The AMA supports the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, and the diet-related risk factors for them, **AND THE DIET-RELATED RISK FACTORS FOR THEM**, as well as acute food safety concerns."

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?

- Yes**
- No**
- Prefer not to respond/ I don't know**

No, the AMA does not believe this clarification will materially impact the work of FSANZ. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

The AMA notes the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform “There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ’s remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade.” When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. The AMA does not agree with this inclusion. The AMA strongly disagrees that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

The AMA recommends that The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of ‘protection of public health and safety’ within the Act?

- Positive**
- Neutral**
- Negative**
- Prefer not to respond/ I don’t know**

The AMA believes that legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

- Yes**
- No**
- Prefer not to respond/ I don’t know**

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

The AMA strongly suggests that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ’s website.

The AMA notes that this would be in line with Best Practice Element 1 as outlined in the IA which states that “the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives”. FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

The AMA recommends that The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

- **Yes**
- **No**
- **Prefer not to respond/ I don't know**

The AMA is supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. 1.3) and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

The AMA notes the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

The AMA notes that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

The AMA recommends that specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

The AMA suggests that FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and

beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. The AMA recommends that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

- Yes**
- No**
- Prefer not to respond/ I don't know**

Clarification of the definition of public health, as contemplated in the IA, will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the FSANZ Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards, to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, the AMA strongly suggests that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities, and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating, and adopting food standards.

The AMA strongly supports the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below:

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

The AMA also wishes to specifically mention the importance of recognising the impact that work of FSANZ has on children’s health. Nutrition affects human health, via epigenetic modifications, from conception, children are a particularly vulnerable group and deserve protection. Children deserve special consideration in relation to assessment of long-term benefits and risks to health when developing food standards. It should be a requirement that the impact of all food regulatory measures on children be considered, as the United Nations suggests under the Convention on the Rights of the Child, especially as it relates to the right to a healthy food environment (see: <https://www.unicef.org/media/96101/file/Protecting-Childrens-Right-Healthy-Food-Environment.pdf>).

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
- No
- Prefer not to respond/ I don’t know

The information given is too limited to support such an approach, given we cannot definitively answer this question, as the IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means the AMA are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as ‘low risk’ and public health decisions always being assessed as ‘high risk’. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach

to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

The AMA has concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

The AMA would strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

The AMA recommends that the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review

What criterion and/or evidence should be used to form the basis of a risk framework?

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

The AMA suggests that the impact of food regulations on children be a specific criterion to be considered in a risk framework. Children should be explicitly considered in relation to assessment of long-term benefits and risks to health when developing food standards, due to the preventive ability of food regulations early in life, having the ability to impact the life-long health outcomes of Australian and New Zealand populations.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

- **Yes**
- **No**
- **Prefer not to respond/ I don't know**

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. The AMA thinks there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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
- No
- Prefer not to respond/ I don't know

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.
- The IA states that the determinations of 'overseas bodies' could be adopted, the AMA supports this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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
- No
- Prefer not to respond/ I don't know

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process, and it is unclear what these processes would be. The AMA suggests that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

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
- No
- Prefer not to respond/ I don't know

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

- Yes
- No
- Prefer not to respond/ I don't know

The AMA believes that allowing FSANZ to create new pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

- Positive
- Neutral
- Negative
- Prefer not to respond/ I don't know

There is no evidence from the IA that any new pathways would apply to broader public health measures. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. The AMA wishes to note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

The AMA, and public health and consumer representatives, would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

- Yes
- No
- Prefer not to respond/ I don't know

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, the AMA also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

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
- No
- Prefer not to respond/ I don't know

The AMA does not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

The AMA understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

What would be the impact of streamlining decision-making arrangements for you?

- Positive
- Neutral

- **Negative**
- **Prefer not to respond/ I don't know**

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

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?

- **Yes**
- **No**
- **Prefer not to respond/ I don't know**

The AMA suggests FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

The AMA notes that without meaningful consultation there is a real risk of the 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?

- **Yes**
- **No**
- **Prefer not to respond/ I don't know**

The AMA suggests FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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**
- No**
- Prefer not to respond/ I don't know**

The AMA suggests the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). The AMA recommends that all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

- Yes**
- No**
- Prefer not to respond/ I don't know**

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. The AMA recommends a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

The AMA recommends that the Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

- Yes**
- No**
- Prefer not to respond/ I don't know**

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. The AMA does not support changes to the process and approval pathway

for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

- Positive**
- Neutral**
- Negative**
- Prefer not to respond/ I don't know**

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and the AMA does not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.
- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA suggests that timeframes for proposals should be considered in component 2.2.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a timelier manner.

The AMA strongly recommends that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. The AMA recommends a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

The AMA recommends a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Component 2.3

Component 2.3 relates to *Efficient and Effective operations*. This section contains questions for Components 2.3.1 to 2.3.4 on pages 57 to 62.

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA supports the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA does not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

- Positive**
- Neutral**

- **Negative**
- **Prefer not to respond/ I don't know**

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

The AMA recommends that the Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

- **Positive**
- **Neutral**
- **Negative**
- **Prefer not to respond/ I don't know**

The AMA notes that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3. The AMA recommends that the Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent, and feasible to administer?

The AMA supports that this levy should only be applied to the largest food businesses, and supports the top 5000 as suggested in the IA.

What would be the expected impact of compulsory fees for all applications?

- **Positive**
- **Neutral**
- **Negative**
- **Prefer not to respond/ I don't know**

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

The AMA does not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

- **Yes**
- **No**
- **Prefer not to respond/ I don't know**

The AMA does not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not FSANZ's role to assist with entrepreneurial activities.

Component 2.4

Component 2.4 relates to *Improving system agility*. This section contains questions for Components 2.4.1 to 2.4.7 on pages 62 to 66.

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

- Yes
- No
- Prefer not to respond/ I don't know

How would this need to be implemented to be successful?

The AMA supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is all already in place and available to FSANZ under Option 1.

What factors should be considered as part of the joint prioritisation matrix?

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

- Yes
- No
- Prefer not to respond/ I don't know

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA supports this and strongly encourage that this database be publicly available. Data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured as a step of maintaining this database.

What types of data would be most useful for FSANZ to curate?

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

The AMA recommends the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA supports the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards, which the AMA opposes. Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

- Yes**
- No**
- Prefer not to respond/ I don't know**

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**
- No**
- Prefer not to respond/ I don't know**

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA supports the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. The AMA recommends a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The AMA is supportive enhanced collaboration between FSANZ and jurisdictional enforcement agencies, particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

- Yes**
- No**
- Prefer not to respond/ I don't know**

Section 6 - Net Benefit

This section refers to questions in *Section 6 - Net benefit* within the Impact Analysis, commencing on page 68.

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

- Yes**
- No**
- Prefer not to respond/ I don't know**

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. The AMA strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications,

costs, and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.

- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

The AMA recommends that the Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

The AMA does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal and Torres Strait Islander, and Māori peoples.

What are the current delay costs to industry?

The AMA does not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. The AMA note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. The AMA does not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

- Yes
- No

Data and expertise are available across 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. The AMA recommends a significant effort be dedicated to identifying and engaging with these experts and organisations.

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**
- No**
- Prefer not to respond/ I don't know**

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. The AMA strongly suggests that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs, and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

- Yes**
- No**

Data and expertise are available across 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. The AMA recommends a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 2 information in the Net Benefit section?

- Yes**

- **No**
- **Prefer not to respond/ I don't know**

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits – the AMA does not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews, and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, the AMA recommends that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

The AMA strongly disagrees that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Section 8 - Best option and implementation

This section refers to questions in *Section 8 - Best option and implementation* within the Impact Analysis, commencing on Page 87.

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

- Yes
- No
- Prefer not to respond/ I don't know

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction, and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.
- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

- Yes
- No
- Prefer not to respond/ I don't know

The AMA notes that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1(low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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?

- Yes
- No
- Prefer not to respond/ I don't know
- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. The AMA strongly recommends that each component is assessed separately. This is particularly important as not all components will necessarily be implemented; it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

- Yes
- No
- Prefer not to respond/ I don't know

The IA summarises that Option 1 was deemed on average much riskier than Option 2. The AMA suggests that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

The AMA notes that many of the risks found under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- *Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not professionally managed.*

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- *Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.*

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. The AMA strongly disagrees that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- *Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.*

The AMA agrees that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of Aboriginal, Torres Strait Islander and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst Aboriginal, Torres Strait islander and Māori people.

Theme: reformed standard-setting

Option 2

- *Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.*

The AMA agrees that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- *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.*

The AMA agrees that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- *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.*

The AMA strongly disagrees that the consequence of this is only moderate minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- *Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,*

The AMA supports the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- *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.*

The AMA strongly disagrees that the consequence of this risk is major (1), and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect

progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- *Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.*

The AMA strongly disagrees that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. The AMA recommends the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations; hence the likelihood of this risk is unlikely (3).

Section 9 - Evaluation of the preferred option

This section refers to questions in *Section 9 - Evaluation of the preferred option* within the Impact Analysis, commencing on Page 104.

Are there any other factors that should be captured in a future evaluation?

- Yes**
- No**
- Prefer not to respond/ I don't know**

Is there anything else you want to share with us on the Impact Analysis?

- Yes**
- No**
- Prefer not to respond/ I don't know**

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. The AMA strongly suggests that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. The AMA acknowledges that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable, and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to

respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health, and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

The AMA wishes to highlight that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

The AMA notes that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

The AMA disagrees with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. The AMA remains concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and the AMA strongly recommends that these are reflected in the next steps for reform.

Contact

████████████████████

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 13:39:56

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Sally Mackay

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Health Coalition Aotearoa

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

New Zealand

Other: :
New Zealand

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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 Executive Summary of the IA states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity" - given this, the main purpose of this review is unclear. The main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

New Zealand has one of the highest obesity rates in the OECD for adults and children. According to the Ministry of Health, dietary risk factors, which include overweight/obesity and unhealthy diets are the major contributor to health loss in Aotearoa/New Zealand at 17.5%. Our packaged food supply is predominantly ultra-processed foods (69% of packaged foods). According to the New Zealand Health Survey, many New Zealanders report not consuming enough fruit and vegetables (44.9% of adults eat the recommended amount of fruit, 11.0% of adults eat the recommended amount of vegetables). In 2022/23, 21.3% of children lived in households where food often or sometimes runs out and 14.4% often or sometimes use food grants. Our current food

system is not providing many New Zealanders with healthy, affordable and accessible food. The IA fails to acknowledge the very real threat of poor diets, which lead to overweight/obesity, and several diet-related diseases including type-2 diabetes, cardiovascular disease and cancer.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

We do not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. Consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis and no reasoning has been given for this decision. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security. This is particularly important in New Zealand where agriculture is responsible for almost half of greenhouse gas emissions.

Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health. Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use. Food production is destined for collapse if environmental issues are not addressed.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs that food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of New Zealanders and Australians should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
 - food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),
- as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease and food sustainability, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health, including food security and food sustainability, and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns, FOOD SECURITY AND FOOD SUSTAINABILITY.”

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform “There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade.” When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost. I

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors, food security and food sustainability.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that “the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives”. FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Recommendation: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with Māori and First Nations people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

The information given is too limited to support such an approach, given we cannot definitively answer this question. The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.-----

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

This question really needs a 'it depends' option.

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.
- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No response

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with Māori and First Nations people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-Māori and non-First Nations peoples.

Not that many traditional foods are not novel foods and therefore would not need to go through an application process.

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:

We suggest FSANZ consult specifically with Māori and First Nations people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of Māori and First Nations people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in Māori and First Nations food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for Māori and First Nations people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact Māori and First Nations people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board

members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

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:

It is difficult to answer this question when there are no details on what a process would look like - so the answer is really 'it depends'. We only support changing the current nomination process to an open market one if it retains the number of public health positions on the board. If nominations are not restricted to the current nominating organisations this could broaden the public health voice. Though there is a risk that an open market process could reduce public health positions on the board, therefore the minimum number of public health positions would need to be retained and that conflicts of interest would need to be declared as there is a real risk that former industry representatives with health backgrounds may qualify.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

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?

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

This question has not been asked in relation to guardianship of key food safety databases in New Zealand. Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for New Zealanders.

In New Zealand, we are highly concerned about the lack of committed ongoing funding for the NZ Food Composition Database, a key database that underpins food regulatory, nutrition monitoring and informs food policy.

Equally concerning, is the outdated data on food consumption in New Zealand (2002/03 for children and 2008/09 for adults). Despite preparation for a national nutrition survey over the last two years, there is no commitment by government to a survey. There is a danger that this preparation work will need to be repeated if there is a long delay in conducting a survey. The NZ Food Composition Database is an integral part of a food consumption survey.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

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 broader burden of disease.
- Food security data
- Data related to food sustainability, such as greenhouse gas emissions, water use, eutrophication etc.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure Māori and First Nations peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of Māori and First Nations peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with Māori and First Nations groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate Māori and First Nations stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

COSTS – consumers and governments

The Cost Benefit Analysis notes that Option 1 has delivered good public health and trade outcomes, and it has prevented the market failures it was designed to address. Whilst this may be the case for short-term health outcomes and for trade outcomes this is most certainly not the case for long-term health outcomes which have deteriorated over the 30 years in which FSANZ has been in existence – this should be explicitly noted as a cost to governments.

Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments, these include:

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (primarily proposals). This can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study below.
- The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:
 - measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and
 - measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).
- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
- The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases.
- A quantification in the Cost Benefit Analysis of the proportion increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products and their displacement of healthy options, as facilitated by FSANZ within the food reg system.

We disagree with the following costs attributed to consumers:

- ‘Small effect on consumer choice through limitation in range of food products available due to deterrent effect, delays in processing applications’. There is an enormous range of products on the market for consumers to choose from and the vast majority of foods do not need to go through the applications process to enter the market – this cost is negligible at best.
- ‘Reduced consumption on food items due to increased costs from cost recovery initiatives’ – we disagree with the inclusion of this as a cost. With only 17 applications approved each year this is very unlikely and even if costs were to be passed on it is for such an insignificant proportion of the food supply each year this is likely to be negligible, Consumers can also choose other foods to purchase so the passing on of costs in relation to a few products is

unlikely to result in reduced consumption on food items generally.

BENEFITS – consumers and governments

- The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses product safety before they are put on the market are not included in the Cost Benefit Analysis.

BENEFITS – industry

- Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the benefit industry receives from products that enter the market under the 12 applications approved each year.
- Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions.
- We note the benefit noted that expediated pathways provide certainty for business in terms of approval timeframes – this certainty exists without expediated pathways as there is always a timeframe for applications to be processed – this benefit is retained under Option 2 and should be included there also.

BENEFITS – governments

There are benefits to governments of FSANZ:

- ensuring foods are safe
- doing food recalls
- progressing proposals

these should all be included in the Cost Benefit Analysis.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made.

We disagree with the general assumption for public health benefit per proposal/review/application –

- - these are not equal and should not be treated in the same way.

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. A non-labelling example which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on neural tube defects and goitre/iodine deficiency.

- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?

- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Costs and benefits for all impacted stakeholders (industry, consumers, governments and FSANZ) for each of type of FSANZ work should be separately noted (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews and the same for governments, industry and FSANZ) so that costs and benefits for each stakeholder and type of work can be individually assessed and considered for each reform.

The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things). How is this measured and factored into the Cost Benefit Analysis?

Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

CASE STUDY - Pregnancy warning labels on alcohol

The proposal for pregnancy warning labels on alcohol provides a good case study on the economic costs and health impacts of delays in progressing public health proposals in the current food regulatory system.

In October 2018, the Ministerial Forum on Food Regulation agreed that a mandatory standard for pregnancy warning labels on alcohol should be developed and asked FSANZ to develop it as a priority. This work was completed in July 2020 when Ministers accepted a proposed draft standard – meaning that the time to complete the proposal was just under two years.

The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement for Pregnancy Warning Labels on Packaged Alcoholic Beverages (DRIS), published in October 2018. This DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at \$1.18 billion per year in Australia and \$171.12 million per year in New Zealand, with the cost of each individual

case of FASD estimated at \$75 662 (AUD). The DRIS is unable to predict the exact number of cases of FASD that will be prevented as a result of the labelling change, however the analysis concluded that only 183 cases of FASD in Australia per year, representing 1.18% of the total FASD cases per year in Australia, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure the economic cost per year incurred for each year of delay is estimated at \$13.8 million, while the health impact is 183 additional individuals living with FASD.

The IA must include analysis of this type to provide a complete picture of the costs of the current system, even if those costs cannot be precisely determined. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the likely impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels are significantly less likely to be implemented in their current form under the reforms proposed in options 2 and 3, because of the increased importance given to trade and regulatory impact concerns. This brings with it a significant health and economic cost, as outlined above.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

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:

COSTS – consumers and governments

Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments, these include:

- As there are no reforms to ensure proposals are progressed in a more timely manner under Option 2, the same health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (proposals) remain under Option 2. These costs should be included and can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study in response to the Net Benefit question for Option 1 above.

- Assume proposals should be completed within 3 years – each year delay after that should be factored in as a cost to consumers and governments given the health benefits that would have been realised if it were processed efficiently – an analysis should be done of all proposals approved in the past ten years and the average time it took from getting on FSANZ books to being finalised, gazetted and implemented. Any time taken to complete a proposal in excess of 3 years should be considered a delay cost to consumers and governments.

- The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:

- measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and

- measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).

There are no reforms proposed under Option 2 that will address these issues and as such these costs should be included under Option 2 also.

- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards. As there are no time limits proposed for progressing proposals under Option 2, these costs remain and should be included in the Cost Benefit Analysis.

- The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases. There are no reforms proposed under Option 2 to reduce these costs and as such these costs remain under Option 2 and should be included in the Cost Benefit Analysis.

- A quantification in the Cost Benefit Analysis of the proportion increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food reg system.

- The health and economic costs borne by consumers and governments of the risk framework proposed under Option 2 which will result in less scrutiny and will not ensure that all products undergo full safety assessments before they are put on the market should be included in the Cost Benefit Analysis.

-

COSTS – consumers

- A cost is attributed to consumers for industry passing on the industry wide levy proposed under Option 2. A \$2,000 levy imposed on a large business is entirely negligible and it is extremely unlikely this would be passed on to consumers. In the event that it was, \$10m per annum passed on to the adult population of Australians is around 50c/year.

COSTS – FSANZ

- We note the cost attributed to FSANZ under Option 1 'substantial operational costs associated with administering an outdated and inflexible Act (e.g. time involved in assessing proposals through a broadly one-size-fits-all approach with limited ability to draw on international evidence-base)' remains a cost under Option 2 as no reforms are being proposed that will change this for proposals (only for applications) and this should be included as a cost for Option 2.

BENEFITS – industry

- Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the revenue industry receives from products that enter the market under the 12 applications that will continue to be approved each year under Option 2 and the additional 5 that will be approved under Option 2 assumptions.

- Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions, these will continue under Option 2.

- Timeframes for applications will be retained under Option 2 and therefore certainty for business in terms of approval timeframes should be noted as a benefit.

BENEFITS – Governments

There are benefits to governments of FSANZ:

- ensuring foods are safe,
 - doing food recalls
 - progressing proposals
- these should all be included in the Cost Benefit Analysis.
-

We reiterate our comment from above in our response to the question on Net Benefit for Option 1 as the same applies for the Option 2 analysis: We disagree with the general assumption for public health benefit per proposal/review/application – these are not equal and should not be treated in the same way:

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. Non-labelling examples which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on NTDs and goitre/iodine deficiency.
- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?
- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)?
- Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

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Data and expertise is available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

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The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the

absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

In relation to the analysis on proposals / applications / standard reviews specifically:

PROPOSALS

- The IA states that Option 2 will continue to see 3 proposals delivered each year (i.e. no change in the number of proposals) but notes that these will be processed in a more 'timely manner'. The assumptions do not provide a timeframe - this needs to be quantified - as noted our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.

- The IA assumes that resourcing limitations are preventing FSANZ from completing proposals in a timely way; however it is likely that the contentious nature of some proposals (e.g. putting pregnancy warning labels on alcohol) and industry pressure is also a significant factor. These factors should be included in the Cost Benefit Analysis.

- Whilst the majority of proposals have a public health benefit this is not true for all (e.g. added sugar and carb claims on alcohol have been identified by FSANZ as potentially increasing consumption thus harm) - this also needs to be factored in.

-

APPLICATIONS

- We note the Option 2 assumption that processing time for other (i.e. non-low-risk applications) will be 9 months under Option 2. This is the equivalent of the paid applications pathway under Option 1. There is no reform proposed that the legislated timeframe for applications will change other than that the expedited pathway (paid) for applications could be removed - no rationale for the assumption that timeframes for 'other' applications will be reduced from 21 months to 9 months is given. This should be clearly set out and justified.

- Applications are largely for commercial benefit and not public health outcomes- this needs to be reflected in the Cost Benefit Analysis as a benefit to industry.

- It should not be assumed that every application has a consumer benefit. Many applications result in unhealthy food products entering the market, this should be factored in, or if that is not possible with available data, then at least they should be considered neutral and not positive from a public health perspective.

- There is no rationale provided for the assumption that 80% (14/17) of applications will be low risk - this should be clearly articulated.

- There is no factoring in of the costs of introducing a risk based approach to assessing FSANZ's work - Option 2 assumes 14/17 applications a year will be low risk and therefore undergo less oversight and scrutiny by FSANZ - there needs to be an assumption that some things will be incorrectly classified as low risk and will therefore undergo a less rigorous approach resulting in negative outcomes for consumers/governments - costs to consumers/governments as a result should be in the Cost Benefit Analysis.

STANDARD REVIEWS

- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

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

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The IA presents two options as available for consideration - Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

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POLICY PROBLEM 1

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support a negative impact rating of 3 (high) for policy problem 1.

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 3 - majority resolution - for solving Policy Problem 1. We would argue that the rating should be 0 (not-at-all) or 1(low) at best.

Sub-problem 1, Policy Problem 1

- Option1: Option 1 could address Policy Problem 1- the confusion about how FSANZ should consider short-and long-term risks to health when developing food standards is one that sits with stakeholders not FSANZ itself - the FSANZ Board have confirmed FSANZ role in long-term health risks. FSANZ simply needs to communicate this better and has the ability to do so under Option 1. As such this sub-problem has no negative impact.

- Option 2: As above. Whilst the inclusion of a definition may address the unclear definition issue of this sub-component the more important element of this sub-component is 'how' FSANZ should consider short- and long-term risks to health when developing standards. There has been no attempt in Option 2 to include mechanisms for how FSANZ is to do this nor to separate out how FSANZ considers these risks. We would consider there is no resolution of this element of the policy problem.

Sub-problem 2, Policy Problem 1

The solution presented in the IA for the confusion about the factors to which FSANZ has given regard in its decision making is simply communication - this is equally available to FSANZ under Options 1 and 2 and therefore each option should have an equal rating for this sub-problem. There is no resolution of this policy problem under each option as no reforms are proposed.

Sub-problem 3, Policy Problem 1

The proposed changes merely add language into the Act in relation to First Nations and Māori Peoples, much like language already exists in relation to 'public health' and we do not consider that sufficient and genuine engagement and consultation has been conducted with First Nations and Māori Peoples to ensure that these changes are in the best interests of those groups. These words do not in and of themselves result in commitment of government to First Nations and Māori Peoples, and respect for their culture and knowledge. We would consider this a minimal resolution of this policy problem, if any. Acting on the Tier 2 and Tier 3 solutions would make a meaningful difference and we strongly suggest these are included at this stage of the reforms.

POLICY PROBLEM 2

-

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Sub-problem 2 - we do not consider that Option 2 provides any reforms that actually remove barriers for Indigenous foods to be brought to market, it simply is the creation of a list of 'safe' traditional foods. These foods don't need any interaction with the novel foods provisions of the Food Standards Code and therefore the relevant importance and impact is limited. As such there is no resolution of this sub-problem in Option 2 and that ratings given to Options 1 and 2 should be the same.

Sub-problem 3 - Option 2 does not 'require' FSANZ to do any holistic reviews at all so there is no resolution of this sub-problem. Increased resourcing under Option 1 could equally have the same impact on holistic reviews and Options 1 and 2 should therefore be rated the same.

Sub-problem 4 - FSANZ already has the capacity to develop guidelines and Codes of Practice and as there is no suggestion that FSANZ is required to do these under Option 2 it provides no more resolution of this policy problem than Option 1. As such Options 1 and 2 should be rated the same.

POLICY PROBLEM 3

-

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should be 1.5-2 (moderate).

Sub-problem 1 - whilst the addition of additional skills will benefit FSANZ, open market nominations would not result in better, more efficient, effective decision making and we would therefore not rate this sub-problem as completely resolved.

Sub-problem 2 - decreases in funding could be resolved under both Options by changes to substantive funding arrangements to FSANZ. Under Option 2

cost recovery mechanisms could be used to address some of the deficit, this could partially resolve this sub-problem.

POLICY PROBLEM 4

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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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

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- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented; it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

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The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below .

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm. As such each of the following risks should have lower consequence ratings:

- Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.
- FSANZ's organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk
- Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work
- Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.
- 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
- Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
- An industry-wide levy could contribute to regulatory capture
- Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ’s ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

- Identified risk: The FSANZ Act remains out of step with contemporary expectations and obligations to recognise Indigenous culture and expertise.

Consequences and likelihood are actually both minimal (3), given the limited engagement with the Act by stakeholders and the public. Terminology in the Food Standards Code could be updated to recognise Indigenous culture and expertise through routine Code management at any time. Nothing proposed under Option 2 addresses this.

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ’s already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 1

- Identified risk: FSANZ’s organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk

We do not support the risk rating of major for this risk (see summary above) and recommend this is rated 2 (moderate). We support that the likelihood rating but note that the risk of this continuing under Option 2 remains high as it is not resolved by any of the reforms presented in the IA as there are no mechanisms proposed to ensure the FSANZ better uses its expertise.

- Identified risk: Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work

We disagree that the consequence is high given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. The consequence and likelihood should therefore be rated as minimal/unlikely (3). This risk is not addressed in Option 2.

- Identified risk: Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.

No evidence has been presented that international food companies are choosing not to enter the Australian and New Zealand market due to regulatory burden. Overwhelmingly products do not need to lodge applications to be introduced into this market so any impact of international food companies not entering the market as a result of this is limited in any event. Consequences and likelihood should both be rated minimal (3). Other hypothesised impacts noted are extremely speculative and not supported by evidence.

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- Identified risk: Nomination and appointment processes would continue to be relatively laborious endeavours and perpetuate the risk that the Board will not have the necessary skills to provide effective governance

We disagree that the consequence of this is moderate (2), it is minor (3). It is also not very likely (rating 3 rather than current 1) given current scope and flexibility for appointments.

- 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

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: The Board could be less efficient and well equipped to consider sectoral interests under new nomination arrangements

We support the risk rating for this risk.

- Identified risk: Expanded cost recovery mechanisms borne by industry could create new barriers to entry for businesses seeking to vary food standards, reducing accessibility of the scheme

Cost recovery methods do not inhibit engagement with FSANZ. We note the Cost Benefit Analysis analysis assumes any costs would be passed on to consumers, as such the consequence of this should be low (3 not 2) and the likelihood unlikely (3 not 2). Overwhelmingly products do not need to lodge applications to be introduced into the Australian and New Zealand market so any impact of cost recovery mechanisms linked to applications is limited in any event.

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations hence the likelihood of this risk is unlikely (3).

- Identified risk: An industry-wide levy could contribute to regulatory capture

Any cost recovery mechanism risks regulatory capture, not just a levy, so this is a risk for all cost recovery mechanisms proposed in the IA. Cost recovery mechanisms that expedite applications (as under Option 1) are much more risky, as are paid applications as a whole (as under Option 2) as this only benefits large organisations who can afford to regularly participate in the application process. As such, the consequence and likelihood of this reform should be considered as moderate (2) at most.

- Identified risk: Imposing a food recall coordination levy could increase the risk of non-engagement with FSANZ by jurisdictional enforcement agencies, resulting in less well managed foodborne risks

We do not agree that the consequence of this is major and this risk should be rated (2-3), food recall is currently managed more than adequately and any indication that there is a serious widespread incident will be acted on immediately. We also think this risk is unlikely (3) as no jurisdiction will allow harm to come to people, industry and government from inaction.

Theme: improving system agility

Option 1

- Identified risk: Efforts to align policy and regulatory work across the system will continue to be frustrated

We support the rating for this risk but note that all reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. The likelihood for stakeholder confusion only remains high if FSANZ and FMM/FRSC continue to not communicate priorities and needs effectively.

- Identified risk: Inconsistencies in interpretation and enforcement will continue to be an issue, particularly for Australian businesses and enforcement agencies, generating undue regulatory burden

Consequences and likelihood demonstrably minor given cross-country penetration of products/companies and necessary jurisdictional-based approach to enforcement. We note that reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in

nature. We propose ratings of consequence (3), likelihood (2).

Option 2

- Identified risk: Greater collaboration across the system could put at risk FSANZ's independence, if not done well

Collaboration across the system is already being undertaken with adequate checks and balances. The reforms proposed under Option 2 are available to FSANZ under Option 1. As such we suggest a likelihood rating of 1 as this collaboration is sure to continue.

- Identified risk: Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The consequence of this would not be dissimilar to current arrangements and we suggest a rating of 3. This is very likely however and should have a likelihood rating of 1 - this has been demonstrated by slow progress on combining jurisdictional databases and slow uptake of Branded Food Database and HSR 5-year review.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

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Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

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Health Coalition Aotearoa is a collective of health/consumers/community organisations and academic leaders with expertise in many aspects of health, including unhealthy food. We envision greater health and equity for all New Zealanders through reduced consumption of harmful products (unhealthy foods and beverages, tobacco, alcohol) and improved determinants of health.

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the Act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture). The regulatory system needs to enable food sovereignty, people have a right to have access to healthy and culturally appropriate food, produced through ecologically sound and sustainable methods, defining their own food and agriculture systems. The New Zealand economy is very dependent on agriculture so climate impacts are likely to severely impact the economy and food security. Many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. New Zealand is highly

FSANZ's role in the food supply

We note that despite noting that the Food Standards Code 'provides ... standards that cover the entire supply chain from 'paddock to plate', the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for

this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. We note further that the IA sets out clearly what the Act is designed to do, it is designed to:

- protect the public good by reducing foodborne illness and promoting population health:

The reforms in Option 2 of the IA do not enable FSANZ to protect the public good by promoting population health.

- address negative externalities, such as where the actions of some stakeholder groups create costs or harm for other people, within these costs being paid for by the responsible parties:

The reforms in Option 2 will perpetuate the negative externalities created by the actions of industry and resulting in costs and harms to consumers and governments - these costs will continue to be paid for by consumers and governments and not industry under the proposed reforms.

- address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production:

The reforms in Option 2 of the IA do not enable FSANZ to address information asymmetries any better than under Option 1.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 13:45:11

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
ian jarratt

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Queensland Consumers Association

Which sector do you represent?

Consumer Organisation

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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 current methodology fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices.

The problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner is not adequately addressed.

Presenting the reforms as two distinct 'all or nothing' options (1 or 2) does not accurately reflect the changes that require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. Also, the approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Options 1 and 2 should not be considered two independent options. There is considerable overlap between them as many of the problems highlighted

under the status quo could be addressed without making significant legislative and operational reforms.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. However, although this change is important, is not likely to result in any meaningful changes to FSANZ's work and approach to public health, . Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this.

And any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ's role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

We recommend that the Act be amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act be amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Therefore, we recommend that the Act be amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We support a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health.

Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. The lack of clear and unambiguous guidance on how to achieve public

health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

We have real concerns that the proposed approach will negatively impact public health. We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The IA provides extremely limited information about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty.

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:

There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed. Food standards should only be harmonised with international standards where those standards meet the Public Health Test. Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. The DIA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace.

Therefore, food standards should only be harmonised with international standards where those standards meet the Public Health Test. The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. It is also unclear how this would work in practice. What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test.

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

Therefore, we would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made to better assess the risk and benefits of this approach.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the 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:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Public Health Test be used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately,

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

We recommend that the Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Furthermore, unless the Act is changed, guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Consideration should be given to amending the Act to allow codes of practice to be mandatory as they are for some other industries, for example some administered by the ACCC.

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:

If the Standard is not changed, which we think should occur to provide greater clarity on what constitutes prominence and legibility, the legibility guideline (which is no longer available or used) should be revised and reissued.

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to "deliver three proposals per year". In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The Act should be amended to include statutory timeframes for proposals (3 years)

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. We strongly oppose any decision that may reduce the number of consumer and public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with consumer or health backgrounds may qualify. By keeping the nomination abilities among consumer and public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

We recommend that the Act be amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA.

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:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings. This should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved and more consistent enforcement of standards that promote better consumer and public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

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:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

We recommend that the Cost Benefit Analysis appropriately reflect consumer and public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

We do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system can other costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Data and expertise are available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to consumers and public health, particularly amongst public health and consumer groups. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

No

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates

an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be ‘carefully selected’ and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

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

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health and consumer support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)

- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 14:09:22

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
SA Health

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
SA Health - Food Safety and Regulation Branch

Which sector do you represent?

Government

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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:

SA Health support the call for focus on inconsistencies with best practice and aligning with best practice elements. A rating system has been used to give a numerical value to each policy problem and the level and extent of impact of each sub-problem.

It is not clear what the future consequences of the ratings will result in. For example, will problems falling within the low magnitude scale no longer be considered in the next phase? Can clarity be provided regarding future consideration of these issues?

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

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:

3.1.7 sub-problem 2 – confusion on factors FSANZ has given regard in its decision-making, and how this aligns with objectives of the Act.

The level of impact score given is low (2). There may be a higher indirect impact on ministers and jurisdictions if the consideration and prioritisation of Ministerial policy guidance is not clear in decision-making. Consideration of policy guidance aims to protect public health and should align with changes to the definition and the objectives of the Act. Examples of impacts for jurisdictions and ministers include increased workloads, uncertainty, strained relationships, and long-term sustainability issues for standard setting.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending the Act to include a definition of public health and safety while maintaining food safety as the paramount concern for the system is an important step to modernising food regulation. It could help clarify around the role of food standards and would give clearer direction to FSANZ on factors that should be considered when assessing food standards. It would provide clarity on FSANZ core functions and help align objectives more closely with the understandings and priorities in public health, including those longer-term health implications.

While the changes could help to enhance transparency, the effectiveness of any amendment will depend on the interpretation of the definitions and objectives and how well it is implemented and integrated into FSANZ's decision making processes. Consideration will need to be given going forward to how responsibilities are shared for broader public health goals with other agencies and that focus on addressing the broader health impacts of food consumption does not dilute our response and vigilance of food safety.

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?

Yes

Additional comments (optional):

If it is implemented and integrated into FSANZ decision making processes it should enable FSANZ to be clearer on its approach and considerations to applications and proposals. FSANZ could be more confident in applying greater focus on long term public health implications from consumption of food. Long term risks to health are often complex, this greater focus and clarity could have a positive impact on timeframes and outcomes.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

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:

Yes, revising the way FSANZ communicates its consideration of Ministerial Policy Guidance would support greater transparency in the development of food regulatory measures. However, it is important that considerations align with that of the other foundational documents such as the Food Regulation Agreement. For example, the recent work on the review of the Food Regulation Agreement suggests strong support for bringing Ministerial Policy Guidance consideration forward in the prioritisation process. This move would reflect and align with proposed changes to section 18 of the Act to safeguard both short term and long term public health objectives.

If the definition of 'protection of public health and safety' within the Act is clarified to be in line with the current policy guidance then this level of consideration should also be given to how ministerial policy guidance is prioritised and reflected in the development of food standard.

SA recommends that further work be considered for ministerial policy guidance to be given priority consideration in the objectives of the Act (section 18(1)) when developing or reviewing food regulatory measures. A suggestion could be to include ministerial policy guidance consideration in connection with the protection of public health and safety in section 18 (1)(a) of the FSANZ Act. For example,

(a) The protection of public health and safety, including consideration of any written policy guidelines formulated by the Food Ministers Meeting.

As suggested, it firstly needs to be understood what the prioritisation is for due consideration in the FSANZ Act. This could then be effectively communicated through written advice on the outcome and reasons.

MOU

A Memorandum of Understanding between FSANZ and jurisdictions could be used to set out the joint agreement of both parties in how standards should be developed including how policy guidance is used, engagement processes with jurisdictions and co-development opportunities.

This could be considered either with the above amendment or as an alternative.

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:

SA would support a general review of the language throughout the Act to recognise Indigenous culture and expertise as seen in other legislation. SA recommends First Nations and Māori Peoples with a connection to the food regulatory system or relevant legislative instruments be consulted on the most appropriate provision or language changes for promoting recognition.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Prefer not to respond / I don't know

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:

This is dependent on other components in the review progressing to ensure a risk-based framework aligns with objectives to safeguard food safety and both short and long-term health. SA is supportive of risk being a key driver in reforming standard setting and support work to further explore risk framework criteria such as those shown in Table 10 (page 51). Suggest that more detailed information is provided on the specific process requirements for the development of a framework and its associated governing principles.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Positive

Free text box, no character limit:

- Positive in principle

Without having further details developed yet through a consultation process it is difficult to understand the full impacts on jurisdictions at this stage. However, it would be expected that once processes and decision-making arrangements are aligned to risk levels this would effectively give FSANZ the ability to implement other legislative changes under a risk-tiered approach that could streamline 'lower risk' application and proposals, which in turn would benefit workloads for jurisdictional officials.

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:

FSANZ already consider international risk assessments, and enabling acceptance of these risk assessments for the purposes of review would bolster capacity to implement a risk-based and proportionate approach to the handling of applications and proposals. This would allow FSANZ to broaden its pool of expertise and data availability and enhance its assessment capabilities.

As suggested in the IA, FSANZ could look at including criteria for accepting risk assessments only from reputable international bodies with appropriate statutory controls.

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:

Recognising appropriate international standards could improve resource allocation by reducing duplicative efforts for standards development with international counterparts. FSANZ can build upon existing standards by adopting international standards from trusted international bodies. SA would look to support expediting the review of applications and proposals without compromising the rigor of the safety assessment. Whether FMM should have a role in approving standards adopted via this pathway would be dependent on the process arrangements and considerations of legal requirements and political accountability.

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:

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:

Yes it would allow FSANZ flexibility in amending food standards and the ability to tailor their approach based on specific risks. It is important that any consideration of principles is developed with FRSC and in line with modern legislative drafting.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

- Efficiencies gained for jurisdictional officials. For example, officer time to assess applications.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Yes

Free text box, no character limit:

- Yes, it could build capacity in the system and allow faster response times for routine matters. Delegating certain decision-making duties could reduce delays in regulatory process and support FSANZ to progress routine matters promptly. It would build organisational capacity and give staff the opportunity for professional development and increase their responsibility in areas of their expertise.
- Arrangements for ministers to delegate decision making through amendments in the Food Regulation Agreement should be further explored. Any delegate arrangements would need ensure the persons hold appropriate knowledge and understanding of the issues e.g. technical expertise in trade, safety and political implications.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

It is important to ensure that any delegation has appropriate oversight mechanisms to maintain accountability and uphold regulatory standards. Clear guidelines, standard processes, training, and regular review could help mitigate risks associated with delegating decision-making authority. Any arrangements need to ensure that decisions remain consistent, transparent, and in line with regulatory objectives.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

Having delegable arrangements would reduce the burden on departmental officials to produce routine ministerial advice for items that Ministers may not feel is necessary to have oversight and decision-making authority over. This would be dependent on the agreed risk framework and process.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

This section in the impact analysis discusses two decision making processes. One relating to the removal of the FSANZ Board non-delegable duties while the other giving members of FMM the ability to delegate decision-making to particular departmental officials. These are two distinct decision-making powers and while there may be similarities in required expertise such as appropriate understanding of technical issues/risk, they should be treated separately in their consideration of required expertise and arrangements.

SA Health suggests that any delegable arrangements for FMM are considered through the FRA and agreed upon by the FMM.

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?

Yes

Free text box, no character limit:

SA Health believes industry would benefit from having a transparent and easy to access list of traditional foods that have undergone nutritional and compositional assessments. Having access to this information could help increase consumer confidence and drive market demand for such products.

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?

Yes

Free text box, no character limit:

Guidance material would help provide regulatory clarity on the assessment of traditional foods and support communities to understand the compliance requirements. Guidance material tailored to indigenous communities could be developed to help support innovation and economic empowerment in their communities. This should be developed in consultation with indigenous communities that have an invested interest in expanding cultural food access in the industry.

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:

• Yes, in principle.

Resourcing FSANZ further could improve the system if the manner of prioritisation of work is also improved. Resourcing would be dependent on available funding. An increase in Commonwealth funding to assist FSANZ with resourcing would be supported.

- **Timeliness:** Regular reviews allow FSANZ to keep pace with evolving scientific evidence, technological advancements, and emerging food safety concerns. This ensures that standards remain relevant and up to date with current knowledge and practices.
- **Holistic Consideration:** Holistic reviews enable FSANZ to consider not only immediate safety concerns but also broader issues such as nutritional quality, labelling requirements, and consumer preferences. This can result in more comprehensive standards that address multiple facets of food regulation.
- **Consistency:** Regular reviews promote consistency in decision-making by providing a structured framework for evaluating standards. This reduces the likelihood of ad hoc changes and ensures that decisions are based on consistent criteria and evidence.
- Regular reviews of standards reduces the number of applications to make amendments to standards, hence releasing resources for other projects.

IA - Informed by ongoing environmental scans, consultation and data analysis, FSANZ could identify standards that require revision and dedicate resources to undertake this work in a timely way (page 55).

Comment: Identifying standards to review should be based on an evaluation of the safety the standard affords the food industry and consumers. FSANZ needs to ensure a balanced risk-based approach between prioritising public health projects and standards needed for safety of food.

IA - This reform idea could help to ensure ongoing relevance of standards, including considering the cumulative impact on health, safety, and regulatory burdens, and provide for a more systematic and strategic approach to reviewing them. This idea would leverage FSANZ's existing coordination roles and expertise (page 56).

Comment: A strategic approach to reviewing standards is needed. Currently the system is not working efficiently for the application and proposal process as suggested by the following figures in the FSANZ annual report.

- FSANZ has 36 applications and proposal on its workplan in 2022-2023.
- 11 proposals are at various stages of development.
- The Food Minister's meeting considered 22 approval decisions in 2022-2023.
- In 2023 annual report, FSANZ completed 20 applications to amend the Code which included 15 processing aids (75%),
- Only 2 proposals were prepared (P1061 and M1021). If FSANZ adds more than 2 proposals a year to the workplan and finalises 2 decisions, the workplan will not decrease in size.
- Some proposals are ongoing for an extended period of time:-
 - o P1010 – Formulated Supplementary Sports Foods - 4 years, 10 months
 - o P1024 – Revision of the Regulation of Nutritive Substances & Novel Foods – 11 years
 - o P1028 - Infant Formula - 10 years, 8 months

IA - Reviewing the Processing Aid Standard and associated Enzymes schedule would complement a risk-proportionate approach to low-risk applications. Investigating mechanisms used by international counterparts where assessment is made on the safety of a technological function, but not restricting the foods in which it can be used, would allow industry to determine whether labelling is required via guidance in a risk proportionate way, reducing compliance burden for regulators (page 56).

Comment: Processing aids are not necessarily low risk since any chemical could potentially be requested to be used as a processing aid and an assessment of its risk needs to be determined before deciding it is a low risk. However, like flavourings their assessment process could be changed to free up resources.

Does the processing aid standard need review?

Currently, a lot of time is spent on processing aid applications (see above). The standard is a mixture of categories, some defined by function, some defined by chemical class that have been put together in the standard in an ad hoc manner. Some of the processing aids have the way they can be used in food descriptions that do not match the other standards descriptions of food in the Code. Reviewing the standard should be a priority.

For flavourings the Code references other lists maintained by other organisations to permit their use in food. Could processing aids be listed in a referenced document so that they do not go through the application process? By modifying the definition of processing aids to include recognising other lists of processing aids this would improve the process and free up resources. Even if FSANZ maintained a list that was published once a year, this would save resources. The Code would reference the document containing the processing aids.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Prefer not to respond / I don't know

Free text box, no character limit:

As mentioned in the response above

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:

Yes, Codes of Practice and guidelines should be considered where an existing standard covers the relevant minimum requirements for food safety but more detailed best practice information is required.

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:

As mentioned in the paper, issues such as sustainable packaging and food waste reduction could be better addressed using guidance to help businesses promote sustainability while ensuring food safety responsibilities are met.

A recent example was the development of the Primary Production and Processing Standards for Horticulture. Issues around specific commodities could have potentially been addressed by a general horticulture standard (e.g., traceability and notification requirements for all commodities) plus the use of a Code of Practice or guideline for specific commodities as risk determined e.g. leafy greens, melons, berries, nuts or other fruits or vegetables. In this way the Standard would be more adaptable for the future.

Other examples can be seen in areas such as wastewater management and drinking water quality which provide established codes and guidance to accompany legislation and drive industry best practice.

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:

It could follow the same assessment of the extent of risk. For example, lower risk issues such as packaging and certain labelling requirements could be considered for codes or guidelines. Details would need to be further established through the risk framework consultation process.

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Neutral

Free text box, no character limit:

A co-developed approach would be preferred. Industry should be actively participating in the shared responsibility and development of Codes of Practice and guidelines.

[Note: mechanisms for adoption of codes of practice and guidelines by jurisdictions would need to be considered.]

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Yes

Free text box, no character limit:

Yes – it is likely that an open market would produce a better skill mix.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Neutral

Free text box, no character limit:

All applications would be dealt with under the proposed risk management framework and assessed accordingly. The overall impact on removing the options for applications to be expedited would depend on various factors and would need to be balanced to support regulatory processes alongside market entry and industry innovation.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

No

Free text box, no character limit:

A levy could help FSANZ to recover costs for food recall coordination services but would be at the expense of jurisdictional agencies that already contribute resources on food recall responses. It could be more effective to give consideration to a broader levy than just cost recovery from government agencies. Food businesses that benefit from FSANZ recall coordination services could be subject to a levy. This ensures that those directly responsible for a food safety incident also contribute to the financial burden of recall management. This will promote preventative measures and accountability for implicated food businesses in contributing to recall costs.

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:

Some recalls are less resource intensive than others. If a levy was considered it could be targeted to the business recalling the product and based on the level and extent of the recall to give a more accurate representation of required coordination costs.

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?

No

Free text box, no character limit:

The proposed FSANZ and FMM joint agenda setting could be an appropriate mechanism to discuss priority work and any need for funding arrangements.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Negative

Free text box, no character limit:

Jurisdiction budgets across health departments are limited since spending on the response to the COVID-19 pandemic. This would add further burden on health departments that contribute resources to actioning food recall responses. Jurisdictions should not be held accountable and penalised for poor business practices. Any consideration of a levy would need to be agreed to by jurisdictions through appropriate mechanisms.

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?

Annual Levy

Free text box, no character limit:

Annual levy would be more equitable.

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:

As mentioned above, state and territory health budgets are capped since the spending on pandemic response. In addition, fees should not be a barrier for jurisdictions to propose measures to improve public health and safety.

As previously discussed, a risk prioritisation matrix could assist to assess the priority of new work requested by jurisdictions or Ministers.

How would this need to be implemented to be successful?

Free text box, no character limit:

The proposed FSANZ and FMM joint agenda setting could be an appropriate mechanism to discuss priority work and any need for funding arrangements.

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:

SA strongly support establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting.

Clear objectives for the joint agenda setting process need to be established and a shared vision of the system priorities needs to be clear. There would need to be established leadership and support to drive the agenda setting from both FSANZ and FMM.

This could be considered as part of the strategic planning process.

Timing and the engagement from Ministers also needs to be considered for successful implementation. Suggest considering an annual inclusion in the first FMM of each year.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

Agree with factors listed in the IA on page 63. Could also consider any other safety issues, inhibitors to trading, issues that would aid compliance/enforcement.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Having a joint strategic agenda to establish focus items for more coordinated work. FSANZ and FMM could develop joint programs where possible, such as cross-agency data sharing, joint surveillance and monitoring programs and collaboration on policy development. It could firstly be of benefit for FSANZ and FMM to look at opportunities for cross-agency development, such as providing staff members more opportunity to participate in cross-agency training or initiatives where possible.

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:

More engagement between FSANZ and FRSC would foster closer collaboration and potentially improve these efforts. However, in the first instance ways to improve existing mechanisms for engagement should be investigated, such as more focused video conferences on priority topics. Adding additional meetings or engagement groups may hinder the ability for agencies to provide adequate time and resources.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

During the review of the FRA, the relationship between jurisdictions and FSANZ was considered. One idea is to establish a Memorandum of Understanding setting out the expectations of how we operate with each other.

Could also investigate including time for reviewing standard drafting prior to FMM notification.

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:

A centralised database management system for key food and regulatory data could significantly improve intelligence sharing and would lead to improved public health outcomes for the system. Jurisdictions would greatly benefit from having access and sharing of data efficiently in a standardised manner across Australia. SA believes a centralised system would significantly improve our multiple-jurisdictional ability to respond more quickly to matters such as food safety incidents, by having real-time access to up-to date information.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Prescribed Notifiable Contaminant data being collected by jurisdictions is very useful information. If FSANZ can curate this data, it could serve as a valuable Intelligence at national level, especially if collected using standardized terminology. A recent pilot by the Data Analytical Working Group has demonstrated that it was possible for jurisdictions that have a prescribed contaminants requirement to share the deidentified data and for it to be combined into a single dataset. In the long term, aligning legislative requirements for prescribed notifiable contaminants at national level will enhance consistency in data recording and collection across jurisdictions.

Data collection of national food business food safety compliance would also be valuable to allow evaluation of what sectors and what controls are impacting the most on foodborne illness rates. This was used to some extent in the development of Std 3.2.2.A and could also be used for targeting education or evaluating effectiveness of regulatory controls. Access to this data by jurisdictions would need to be considered, particularly as the data for compliance and enforcement is captured by varying food regulation agencies in varying formats. Standardisation of data sets would be important.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Prefer not to respond / I don't know

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

It would help to provide regulators and food businesses with an increased understanding of the drafting and intent of standards and clarify the expectations to improve consistency in the interpretation. This may be helpful to Environmental Health Officers and local councils who could use Statements of Intent as guidance for interpreting standards and improving their compliance and enforcement policies.

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:

Could refer to the previously used 'notes' in food standards as a reference point which were very helpful. A Statement of Intent should provide clear guidance on the objectives and intended outcome of a food standard and why decisions were made.

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:

Yes, in principle and would need to be determined how this would coincide with FRSC and ISFR implementation work and guidance development. Suggest exploring options in collaboration with associated forums. FSANZ would need to consider the costs and resources involved to support an industry needs or requests service while maintaining existing workplan commitments.

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:

This would promote food sovereignty and align with the recognition of indigenous culture and expertise in the Act which has been supported by Ministers as a concept. This approach would demonstrate a commitment to cultural consideration in the Act. Consultation with First Nations or Māori people should be considered where directly affected and considered appropriate.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

• Yes, particularly in standard development.

For example, the good working relationship between FSANZ and the Food Safety Management Integrated Working Group during the development of Standard 3.2.2A allowed for effective implementation considerations during development. More opportunities for targeted discussions on specific items (as per Quail application) could draw out implementation issues earlier.

Additionally, the ability for jurisdictions to see final drafting prior to going to Ministers, would provide opportunity to identify inadvertent enforcement or compliance issues arising from the drafting process.

Using existing mechanisms for collaboration and fine-tuning current processes to align interpretation and enforcement of food standards. For example, FSANZ collaborating with jurisdictions through existing forums on the development of statements of intent for food standards.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Yes

Free text box, no character limit:

More ability for FSANZ to call for targeted FRSC consultation and discussions prior to investments in working group development.

FSANZ could identify specific priority areas that would benefit from further consultation with FRSC to establish objective settings and better inform working group development. This would ensure that working groups have clear mandates and established support from FRSC stakeholders with could help streamline future project work.

In some cases, calls for meetings with FRSC or other representatives can be utilised to clarify matters, expedite work or even negate the need for additional working group functions.

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Yes

Free text box, no character limit:

- Yes, noting the discussion is on only two options,
 - i) status quo and,
 - ii) modernising legislation.

Option 2 provides a resolution to the problem and Option 1 maintains the current identified problems. This assessment approach may have been more suited to an impact analysis assessment with a multitude of options.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Yes

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Yes

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Feedback on the Impact Analysis document - The impact analysis was extensive and the layout could have been improved for ease of considerations. For readability purposes it could have benefited from having information about a component problem and the relevant option for reform in the same section. It also could have benefited from having some of the content as attachments to reduce the density of the document.

Next steps - How do all of these concepts fit together for implementation? The next steps should include some modelling of scenarios for example, how a system office works, how Ministers are involved in decisions about risk frameworks and overseas recognition of risk assessments etc.

Phased approach - there are a lot of big concepts explored here which would mean a lot of changes all at once. Is it worth considering a phased approach? For instance, firstly dealing with more obvious and cost neutral changes such as shared agenda setting with Ministers, then addressing the more extensive improvements?

SA Health welcomes the opportunity to provide comment on the Impact Analysis for the Review of the Food Standards Australia New Zealand Act 1991 (the Act)

The Food Safety and Regulation Branch of SA Health supports in principle:

- Option 2 – Modernise regulatory settings

This option seeks to modernise the Act to make it agile, resilient and fit for purpose.

- The Impact Analysis seeks feedback on the strengths, limitations and opportunities associated with options to reform the Act and FSANZ's operations.

SA Health strongly supports any changes being considered in conjunction with other P3 reform work such as the revised Food Regulation Agreement (FRA).

SA Health values the contribution FSANZ make to setting and monitoring standards for food across Australia and New Zealand. As mentioned in the Impact Analysis 'the system can be improved but is not broken'. SA Health supports the call to focus on improving inconsistencies with best practice regulation and standard setting and to align food regulation to be outcomes-based with supporting guidance and administered in a risk-based and

proportionate manner.

While supportive of modernising food legislation it is important to recognise that Australia has a strong and robust food regulation system. Recognising the strengths of the current system can serve as a foundation upon which to build improvements to ensuring food safety, quality, and integrity. While there are opportunities for improvement it is important to preserve the strengths of what already works well in the current system and build upon those.

As mentioned above SA Health is supportive of modernising changes to the Act and emphasises the need for the FSANZ Act review and P3 reform work to ascertain linkages and be collective in their intended outcomes and finalisation.

SA strongly supports the need for all aspects of the P3 reform work to continue as one aligned reform project. This includes the FSANZ Act Review, Strategic Statement, Strategic Outcomes, and the Food Regulation Agreement (FRA) update. SA emphasises the importance of alignment between the principles of the FRA and the FSANZ Act to ensure efficient food regulation across Australia and New Zealand. Ensuring alignment establishes transparency and trust amongst the public, consumers, and government bodies that the agreed principles have been enhanced and reinforced in a manner that improves food regulation efforts across the entire system.

SA Health looks forward to continuing to work with Australian Government of Health and Aged Care on the review of the FSANZ Act.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 14:29:20

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Beverages Council Limited

Which sector do you represent?

Food Industry

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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:

Without full transparency of scientific methodology, such as the process utilised to determine value assigned to components, the ABCL is unable to provide comment on the methodology used or how it could be improved.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The ABCL is not aware of other methodologies or evidence that the impact analysis (IA) should consider but as per previous response, without full transparency of the methodology used, the ABCL is unable to provide comment on the methodology used, and what others can be used, but does recommend methodologies should be based on robust scientific evidence.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

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 ABCL is not in a position to comment on the ratings assigned to each of the problems and sub-problems as we do not have full transparency of the scientific methodology, such as the process utilised to determine the value assigned to each of the problems and sub-problems.

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 ABCL does not support the amendment to the current wording regarding 'public health and safety' and does not believe there is confusion surrounding the definition. Both Section 3 (S3) and Section 18 (S18) already adequately define public health and safety, therefore they should remain as they appear in the Act, and not be further clarified or explained.

FSANZ already undertakes work that promotes healthy eating and a healthy food supply within its current remit, such as nutritional labelling and mandatory fortification of vitamins and minerals in targeted foods. The broader remit of better supporting the health of Australians through preventive health measures is already well funded and actioned adequately by health departments and agencies across the nation.

Further to this, all State & Territory and NZ Food Acts already define safe and unsafe in a manner that includes public health outcomes; redefining this in the FSANZ Act could potentially be contradictory to other definitions and cause confusion. A re-definition, which the ABCL reiterates it does not support, could also necessitate re-defining these key terms within other legislation.

Further, any deviation from the current objectives of FSANZ would create a conflict or disconnect with other similar agencies around the world. For example:

- United States' Food and Drug Administration's states its objective of protecting public health by ensuring safety, efficacy and security of their nation's food supply;
- European Food Safety Authority (EFSA) states they provide independent scientific advice on food-related risks,
- Food Safety Authority of Ireland (FSAI) similarly states they are a statutory independent and science-based body, dedicated to protecting public health and consumers in the area of food safety and hygiene.

FSANZ's core responsibility is to protect public health and safety by ensuring a safe food supply in partnership with food and health authorities. FSANZ does this by developing evidence-based standards for regulators and industry, monitoring the safety of the food supply, supporting consumers to make informed choices and coordinating food incidents and recalls in Australia. The ABCL believes that perhaps there is confusion around the definition due to lack of familiarity with FSANZ's authority and responsibilities.

The ABCL does not support an amendment to the Act or to FSANZ's remit to include addressing preventative and chronic health issues and sees this as a duplication of efforts and a wasteful use of government funding already well managed by other departments/agencies across state and territory level. Indeed, the ABCL believes that this pivot in focus dilutes FSANZ's ability to adequately address its principal focus, food safety.

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 ABCL does not support further clarification and is of the strong belief that such expansion of focus and remit could negatively impact and complicate the way FSANZ approaches applications and proposals. Such clarification would likely cause further delays than are already experienced in Australia and New Zealand (ANZ) to have applications and proposals approved by deterring from FSANZ's core remit of protection of public health and safety. Further to this, FSANZ already consider written policy guidelines from the Food Ministers Meeting (FMM) (when provided) and as part of this, would include public health therefore, no further clarification is required.

For example, as mentioned in the IA, the FMM in 2013, issued a ministerial guideline which indicates that "Public health and safety in relation to food refers to 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." Therefore, it is the belief of the ABCL that clarification is not required and should not impact, materially, the way that FSANZ approaches applications and proposals and the factors they give regard to as it should already be part of its remit.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Negative

Additional comments (optional):

The ABCL does not see any value in clarifying the definition and as mentioned above, does not believe clarifying would have any material impact on how FSANZ operates, given, during the development of regulatory measures, it must have regard for ministerial guidelines. Therefore, the ABCL believes that clarifying the definition of 'protection of public health and safety' will have a negative impact for reasons such as:

- FSANZ's primary responsibility is to protect the public from immediate acute health risks through food standards setting.
- There are already programs in place, both at state and federal level, to achieve broad public health outcomes. Alongside these programs, sizeable Department of Health and Aged Care (DOHAC) funds have already been spent on researching and protecting community health through core population health budgets, and numerous government agencies and government have funded NGOs to oversee these programs/activities. The ABCL believes this division of focus and responsibility best supports outcomes for the achievement of preventative public health outcomes.
- Re-clarifying the definition for FSANZ could necessitate re-clarifying it within other pieces of legislation and/or regulation.
- Expanding FSANZ's remit to include a broad preventative public health focus would result in duplication of efforts, a waste of funding, a dilution of its core focus on food safety, and likely impact negatively on FSANZ's global reputation as a reputable food safety body.

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:

The ABCL supports this component in principle. Greater transparency on political influence such as the level of regard to which FSANZ has given to Ministerial Policy Guidance when developing food regulatory measures is a positive for industry.

ABCL acknowledges that communication of consideration of Ministerial Policy Guidance is already in place through various channels and mechanisms however, the effectiveness of this communication could be improved. The ABCL recommends a clear statement to indicate when a regulatory measure has been influenced by Ministerial Policy Guidance, so far as to defer from the position determined by FSANZ, as well as when there has been minimal or no consideration given to the Ministerial Policy Guidance. The ABCL recommends this communication to be either within the Communique following the FMM and/or within the approval report of the relevant proposal/application.

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 ABCL supports the consideration of FSANZ's activities to better recognise Indigenous culture and expertise within the current remit.

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 ABCL does not have a formal position on how the Act might be amended to promote recognition of Indigenous culture and expertise but suggests deferring to how other countries such as New Zealand manage this topic.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.1. The ABCL reiterates its support, in principle, of greater transparency on revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures and recommends a clear statement indicating when a regulatory measure has arisen as a result of or has been impacted by Ministerial Policy Guidance. The ABCL also supports new provision and/or language changes in the Act to better support FSANZ to recognise Indigenous culture and expertise.

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:

The ABCL supports, in general, the introduction of a risk-based framework to support FSANZ to be flexible and proportionate in handling of Food Standards Code (FSC) changes. The non-alcoholic beverages industry has strongly expressed the need to expedite the approval process of variations to the FSC, specifically for low-risk applications similar to those already approved by FSANZ or those that are widely accepted across international jurisdictions in addition to minor administrative matters. Appendix D of the IA provides worked examples of how this framework may be applied and the ABCL strongly advocates for public consultation before the framework is endorsed by the FMM. This consultation process will allow for industry and other stakeholders to contribute insights from other jurisdictions where risk-based frameworks have been implemented. Additionally, it ensures the framework is tailored to meet FSANZ's core responsibilities and is fit-for-purpose.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The ABCL has not identified specific criterion and/or evidence that should be used to form the basis of a risk framework. However, ABCL suggests that FSANZ would be well positioned to defer to how other markets manage risks such as Health Canada and European Food Safety Authority (EFSA), as examples.

The ABCL notes that a risk-based framework should not preclude stakeholder engagement, consultation and feedback pathways, therefore, strongly recommends that public consultation is required during the development of this framework to ensure there are no gaps or unintended consequences during its inception.

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:

ABCL supports the risk-based framework in principle. Such framework is a strategic approach to enable FSANZ to allocate resources effectively by prioritising work and activities based on their level of risk. This would support the streamlining of current pathways to process minor variations such as, acceptance of risk assessments from overseas jurisdictions and creating new pathways to expedite low risk variations to the FSC. Employing a risk-based framework will not only reduce regulatory and cost burden on stakeholders but will incentivise businesses to use the application process to bring innovative products to market, thereby adding to economic growth and increasing potential trade opportunities.

We note that the IA includes an indicative risk framework to differentiate between low, moderate and high-risk amendments and that the level of decision-making arrangements involved at each risk tier would be determined by the proposed criteria. The ABCL suggests that it would be beneficial for industry (and stakeholders more broadly) to be engaged in the development of the proposed risk-based framework and any subsequent reviews. This involvement would help ensure the framework is appropriately tailored to manage risks in proportion to their significance and is fit-for-purpose. The introduction of a risk-based framework would also reduce the time & resources spent on applications and proposals and would allow FSANZ to allocate resource elsewhere.

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:

The ABCL supports, in principle, enabling FSANZ to accept relevant risk assessments from international jurisdictions such as Health Canada, Ministry of Health, Labour and Welfare (MHLW) Japan or US Generally Recognised as Safe (GRAS) reports, as examples. The judicious consideration of such assessments would allow FSANZ to expedite the approval process of variations to the FSC specifically for low-risk applications that have already been approved and are widely accepted across international jurisdictions. Should FSANZ utilise such risk assessments, industry would expect to see some benefits such as reduced cost of applications (for cost recovered applications) and reduced timelines to approval. The ABCL would also support FSANZ in seeking reciprocity arrangements with those agencies it decides to accept risk assessments from.

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:

In general, the ABCL supports recognising and adopting appropriate international standards such as those in the Codex Alimentarius, as an example. However, the ABCL does not believe that such recognition and/or adoption should be automatic, as some regulatory oversight measures would need to be in place. Public consultation should still occur to ensure the standard is fit-for-purpose and appropriate for the ANZ markets and that there are no

unintended consequences in adopting standards developed in other markets.

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 ABCL supports the streamlining of current pathways to process minor variations of the FSC, such as acceptance of risk assessments from overseas jurisdictions and creating new pathways to expedite low-risk variations. Minimal assessments to determine the suitability within the ANZ context of dietary exposure and consumption trends, in addition to simplified targeted consultations with relevant stakeholders, would ensure those checks and balances are maintained to understand the impact within the food regulatory system.

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 ABCL supports in principle the introduction of principles in legislation to allow FSANZ to create other pathways to amend food standards as it will allow for flexibility in developing additional pathways tailored to specific circumstances. This could allow for FSANZ to better prioritise and expedite the review process and would allow for allocating resources more efficiently, focus attention on areas of greater concern and ensure a more responsive and adaptive regulatory framework.

However, the ABCL notes that further detail and information is required around this topic, and we recommend that industry and stakeholder consultation should remain a requirement for any amendments being made to food standards.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Overall, the introduction of new pathways could have a positive impact on industry as they will help expedite the approval process of applications and proposals, support innovation in manufacturing processes and products, as well as help reduce the resource and cost constraints on FSANZ and industry. Leveraging other regulatory bodies, especially for low-risk applications, would help expedite the approval process and allow for consistency across the industry, for example, the use of Codex Alimentarius definitions and adoption of standards from other international jurisdictions.

The ABCL strongly recommends that new pathways should include stakeholder engagement/consultation to ensure effective and efficient decision making and to ensure there are no unintended consequences from the introduction of these pathways.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

The ABCL notes there are several opportunities and areas that should be considered to ensure FSANZ can adapt and strengthen food standards to meet the needs of the food industry and ensure the safety, quality and integrity of the food supply:

- Stakeholder engagement: with regular stakeholder engagement, valuable insights can be shared relating to topics such as emerging trends, concerns, and innovations within the food industry, which may help identify areas where amendments may be necessary to address such topics.
- Global harmonisation: new pathways may lead to greater harmonisation and regulatory coherence globally, which in turn can facilitate trade and promote consumer confidence.
- Risk assessment and management: as mentioned previously, new pathways can provide the opportunity to accept risk assessments from overseas jurisdictions.
- Use of Codes of Practice (CoP): the FSANZ Act currently permits FSANZ to support CoP and there are existing industry voluntary CoP working successfully to support the safety and integrity of the food supply e.g., the Australasian Bottled Water Institute (ABWI) Model Code.

The ABCL strongly recommends that industry be given the opportunity (via public consultation) to provide comments on proposed amendments of food standards prior to them being finalised and gazetted.

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:

The ABCL partly supports and partly does not support the opportunities for decision making arrangements to be delegated.

We support the delegation from the FSANZ Board to the FSANZ CEO, given the FSANZ CEO is well placed to make decisions regarding amendments. The

ABCL recommends new pathways are underpinned by comprehensive risk-based frameworks to support expedited pathways for low-risk applications or variations and recommends there is clear communication and transparency to stakeholders surrounding the delegation of decision-making to the FSANZ CEO.

The ABCL does not support the delegation of decision-making arrangements from members of the FMM to departmental officials for the following reasons:

- Food Ministers (FM) should continue to be the final decision maker – FSANZ's role is to solely focus on assessing risk to public health and safety, standard setting and providing recommendations to the FMM. It is beyond FSANZ's or any other departmental official's role to be the final decision-maker for food regulatory measures that have a much greater impact on Australian lives than public health and safety.
- Any delegation of decision-making to other departmental officials by the FM will not support or promote flexibility or efficiency and will negatively impact transparency of decision-making and accountability of that decision-making (where lack of transparency already exists).
- Including Ministerial oversight provides a final checks and balance to the approval process.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The ABCL recommends that factors for determining the level of risk for decision-making should be made in line with the risk-based framework. For example, variations deemed low risk by the framework, where there is minimal impact to public health and safety, could be delegated to the FSANZ CEO, whereas decision-making for moderate & high-risk variations, particularly where there could be a cost to industry, for example, labelling changes or compositional updates, should not be delegated and the decision-making remain with the FMM for Ministerial oversight.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

The ABCL believes that should the streamlining of decision-making arrangements be implemented in line with the risk-based framework, where minimal check pathways for low-risk applications/amendments apply, then in theory, they can be approved faster, which would then positively impact industry. However, as mentioned previously, the ABCL does not support the delegation of decision-making arrangements for applications/amendments that may have significant impact to public health and safety, as we believe this could have a negative impact to industry.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

The ABCL supports the delegation of decision making from the FSANZ Board to the FSANZ CEO but does not support the delegation of decisions from Members of the FMM to departmental officials. Delegation of decision making would need to be very carefully considered and have the appropriate guardrails in place to ensure there is no risk of bias and there is appropriate oversight for a final check and balance of food standards approval. With regards to delegating to the FSANZ CEO, the ABCL believes that the expertise expected of a CEO would be broad-ranging and inclusive of complexities across the food system, the industry, policy and scientific approaches in risk management and assessment. The ABCL believes that FSANZ's independence is crucial for maintaining public trust in the safety and integrity of the food supply. Losing this independence through delegation of decision-making from FM to departmental officials will undermine its ability to fulfil its mandate of protecting public health and safety through the development of robust and evidence-based food standards. The ability for the FMM to delegate to department officials diminishes accountability and transparency around decision making.

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:

ABCL generally supports the idea of expediting the introduction of traditional foods or ingredients into the market. However, the ABCL does not believe that it will be a one-off investment as the list would need to be maintained and continuously updated. As such, we question who would take responsibility for maintaining and updating the list, and how does this compare to the management of novel foods? The ABCL requests further detail and information regarding this one-time investment and the continuous maintenance of the list, as well as a definition of traditional foods compared to novel foods.

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 ABCL does not have a formal position on this because the use of traditional foods in our industry's beverages is minimal at best. However, we note in our response above, the need to define traditional foods and how they compare to novel foods. Currently the process to gain approval for novel foods is

burdensome and so few products make it to market under this classification. Therefore, it is ABCL's view that additional guidance materials on assessing the safety of traditional foods would likely facilitate the entry of these foods to market. Such guidance materials would also provide clarity and standardised procedures for assessing the safety of traditional foods and addressing potential barriers that may have previously hindered their entry to market. The ABCL notes that management of guidance materials for traditional foods should be done carefully to prevent the approval process from becoming burdensome and using unnecessary FSANZ resources.

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:

The ABCL supports providing more resources to FSANZ to undertake more timely, holistic and regular reviews to assess standards within the FSC as is part of their core remit. Such resources and support would allow FSANZ to stay abreast of emerging scientific evidence, technological advancements, and changes in industry practices. This would also facilitate the identification of gaps or areas for improvement in existing standards as well as the development of new standards to address emerging risks and consumer preferences. Such resources and support also require specific governance arrangements to ensure the views of stakeholders on the appropriateness and effectiveness of standards was included in the evaluation. ABCL recommends that before any amendments are made to a standard there is a robust process in place which includes public consultation to consider the appropriateness of regulatory updates to the Code as well as to seek stakeholder views.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

The ABCL notes that as well as more holistic and regular reviews of local standards, FSANZ should also have more holistic and regular reviews of standards based on international context. This holistic view for international standards will support greater global harmonisation of standards as well as help reduce technical trade barriers. An example where global standards could be considered more holistically is the adoption of the JECFA framework for Steviol Glycosides. Both Australia and New Zealand are heavily involved in Codex work and therefore, would have had some involvement in the adoption of the JECFA framework for Steviol Glycosides. This framework means that all four production technologies for 960 are permitted under Codex for the production of 960a, 960b, 960c and 960d. However, currently under FSANZ FSC, 960d is not a permitted technology and the only way this glycosylation production technology and use of 960d would be permitted in ANZ, is to submit a new application to FSANZ. This application would come at a significant cost to industry as well as requiring significant resourcing in FSANZ. As the labelling of Steviol Glycosides as per the FSC does not differentiate by 960a-d, it is labelled as 960, the technical barrier resides within Schedule 3 of the FSC which regulates the purity of substances, including production technologies. Therefore, an update to Schedule 3 would be required to allow for the use of Steviol Glycosides produced by glycosylation. This is a prime example of where FSANZ could readily and easily adopt the production technology for 960d under a risk-based approach, saving on resource for industry and FSANZ and also ensuring FSANZ's regulation remains competitive and consistent within an international setting.

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:

The ABCL supports the use of Codes of Practice (CoP) and guidelines as they are useful resources for industry, especially when the FSC is, in some cases, ambiguous. They provide a pathway for businesses to ensure compliance and offer an alternative to the lengthy process of updating food standards, which requires significant investment from FSANZ and industry. For instance, a short-term issue, affecting only one sector, can often be managed without needing amendments to the FSC. Where CoP are absent in ANZ the non-alcoholic beverages industry refers to the Codex Alimentarius CoP. Whilst this is not ideal, as often the international CoP don't cover legislation specific to ANZ, it is a strong indicator of the industry's need for this type of assistance to better interpret food regulatory measures. In some cases, FSANZ's reference to or acknowledgment of overseas CoP, as appropriate for ANZ context, could be sufficient endorsement for industry's use of such CoP without the additional use of resources. The ABCL notes the importance of CoP and guidelines needing to complement food standards without straying beyond the scope of FSANZ's core remit. For example, the ABCL does not support the low-risk examples provided in the IA that CoP can be used in relation to sustainable packaging, or nationally consistent school canteen options and placement and promotion of foods in grocery stores. Sustainability and marketing & advertising are not within FSANZ's core remit and CoP and guidelines on these matters do not complement food standards.

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:

The ABCL believes the below examples could have been better solved by a Code of Practice or guideline:

Patulin in apple juice products: In 2020, there were several Australian apple juice products recalled due to high levels of patulin. FSANZ coordinated a national survey in 2021 and 2022 of apple juice and apple products in Australia to find out how much patulin they contained. Patulin levels were generally low and the results were used to assess food safety risks for consumers and FSANZ considered whether to recommend risk management measures. FSANZ conducted a dietary exposure assessment, and exposure to patulin for Australians was determined to be low, and therefore, it was determined that there are no food safety concerns associated with dietary exposure to patulin. This specific example is a good example as to how an issue was better solved by a CoP or guidelines, as it shows industry taking initiative of best-practice in the absence of country specific CoP and after consultation, FSANZ now endorse on their website guidance for industry to mitigate patulin risks.

Pregnancy warning label in alcoholic beverages: CoP could have been more beneficial to industry in providing different options on how to include a pregnancy warning on the label without mandating a coloured label, which can pose operational challenges for manufacturers that don't use coloured labels or manufacturers that face limitations regarding the maximum number of colours that be printed on a single package.

Food allergen labelling in restaurants and food service establishments: A CoP and guideline could be useful for food allergen labelling in restaurants and food service establishments to ensure clear & consistent communication of allergens on menus, such as they are communicated on labels of prepackaged food.

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:

The ABCL believes the voluntary use of CoP and guidelines could be incorporated in the risk framework by assessing issues such as the examples referenced above, based on their risk to public health and safety and their impact to industry and consumers, as an example. Should issues be of low risk to public health and safety and minimal impact on industry i.e., the issue only applies to a select food category, then this would reduce the risk or need for an application or amendment to food standards and would encourage greater adherence to CoP or guidelines.

The ABCL reiterates its support for the development of a risk-based framework in consultation with stakeholders.

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:

The ABCL supports CoP and guidelines being developed to support the FSC which would then benefit any stakeholder that uses the FSC, not just industry. They will also support addressing jurisdictional inconsistencies given States and Territories use the FSC for enforcement activities.

The ABCL believes that industry should absolutely be part of the stakeholder engagement to assist in the development of such CoP or guidelines but should not be solely responsible for leading the development. Conducting stakeholder engagement will highlight the key areas of ambiguity within the FSC and would allow for clear guidelines that would support businesses, particularly smaller businesses, in interpreting the FSC. The ABCL recommends that the use of these CoP should be voluntary to allow smaller businesses to work towards best-practice and larger businesses to ensure consistency across the industry.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.2 but reiterates its support of the development of a risk-based framework as well as the development of Codes of Practice and guidelines to complement food standards, however, with the engagement of stakeholders to ensure they are fit-for-purpose. The ABCL also reiterates its support of delegation of decision-making from the FSANZ Board to the FSANZ CEO but strongly objects to delegation from Members of the FMM to other department officials.

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 ABCL believes it is important to maintain a mixture of skills, knowledge and experience relevant to FSANZ's core remit and function on the Board. Any amendments should be carefully considered to ensure the Board's effectiveness is enhanced without compromising its ability to fulfil regulatory responsibilities.

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 ABCL believes that an open market nomination process that considers the inclusion of relevantly qualified private sector and civil society directors as the most effective model to enhance the efficacy of the FSANZ Board. An open market nomination process would present an opportunity to capitalise on much broader skillsets and a range of experiences of directors. The ABCL believes that it is critical when determining suitability, that sufficient regard is given to the establishment of processes that assess a candidate's experience e.g. statutory authorities, their representation of an industry as a whole rather than a specific brand or business, and that a candidate is deemed suitable in their own right as an individual.

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:

The ABCL does not support the removal of the option for applications to be expedited. Expedited applications are already cost-recovered, and industry pay heavily to use this pathway. The purpose of the paid expedited pathway is to ensure FSANZ are appropriately resourced to enable these applications to be reviewed and approved for use ahead of the non-paying applications. The proposal to remove this option and to retain some form of cost-recovery is not supported and will disincentivise food businesses/suppliers to invest or operate in ANZ, which in turn would stifle innovation, lead to greater level of uncertainty for industry and ultimately lead to trade barriers.

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 ABCL does not support the implementation of an industry-wide levy. The introduction of a levy and eligibility criteria for a levy will increase the already existing disparity between larger and small to medium businesses. We believe that, like other government bodies, FSANZ should be appropriately funded like any other government agency which provides a service to the public. The reduction in funding to FSANZ over the past two to three years has been a continual worry for industry. FSANZ, once a highly effective and efficient food safety agency, has now become a struggling, under resourced and stressed government body. Throughout this period, industry has experienced prolonged timelines to obtain crucial services such as application approvals and FSC amendments which FSANZ provides not only to industry but also on behalf of all Australians. The ABCL firmly believes that with appropriate government funding, FSANZ will be able to regain its former effectiveness and efficiency.

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:

ABCL does not support the implementation of an industry-wide levy. The introduction of a levy and eligibility criteria for a levy will increase the already existing disparity between larger and small to medium businesses. Industry already pays levies through fees associated with various applications and approvals.

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:

The ABCL does not support this option and strongly objects to the idea that a government body should be reliant on industry funding. If such an option were to be pursued, as a principal funder, precedent within other areas such as governance models for container deposit schemes, industry would expect to occupy half the seats on the FSANZ Board to ensure the appropriate governance, direction and execution of the funds industry provides.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

The ABCL does not support cost recovery from parties seeking amendments to the FSC. FSANZ supports or participates in other Government activities such as the development and monitoring of the Health Star Rating system, food recalls, and other broad public issues which impact considerably on FSANZ's resources. Rather than compulsory fees, ABCL suggests where FSANZ's activities have a broader or predominantly public benefit, this is an area which government should fund, not industry. This principle extends to services commissioned by federal and state governments, including its parent agency DOHAC.

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 ABCL does not support the concept of a 'fee for service'. The ABCL believes that based on FSANZ's current remit there is no scope for additional entrepreneurial activities and FSANZ should focus on its core activities only.

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 ABCL believe that a food recall coordination levy could possibly contribute to a more sustainable funding base. Food recalls can often be complex and cross-jurisdictional. As mentioned above, we believe that any work FSANZ does for state and territory bodies, such as a food recall, should be carried out on a cost recovery basis, with the jurisdictional government agencies funding this. However, the ABCL does not believe that industry should be charged for recalls given there is already a significant cost to a manufacturer for recalling the product. The ABCL requests further transparency on the cost recovery process to understand what the potential implication could be to industry should this levy be implemented.

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 ABCL requests further transparency on the current cost recovery process to be able to provide comment on eligibility criteria for a levy.

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:

Charging other jurisdictions for proposal or project work would indeed support FSANZ to carry out this work, particularly if this work deprioritises other topics on FSANZ's workplan. However, the ABCL notes that unless FSANZ has sufficient base funding from government on an ongoing basis, it will not be able to carry out its core work which is food safety and standards. We would support jurisdictional funding if FSANZ's core budget issued annually by government was sufficient to cover its core work.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Neutral

Free text box, no character limit:

Cost recovery is a common thread throughout government and between the federal government and jurisdictions.

How would this need to be implemented to be successful?

Free text box, no character limit:

We believe this is an issue for federal and jurisdictional governments to negotiate.

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

We believe this is an issue for federal and jurisdictional governments to negotiate. We do not believe that industry should be charged for recalls given there is already a significant cost to a manufacturer for recalling the product.

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:

Additional funding to FSANZ for additional proposal work would be positive for FSANZ which in turn would be positive for industry, in theory, as it will fund FSANZ to assign appropriate resourcing to the work. Without this funding, there are no barriers to mitigate the amount of work going to FSANZ from jurisdictions. However, as mentioned above, without core base funding to ensure FSANZ acquires the resources it needs to undertake its core duties, any jurisdictional proposal projects would only serve to further delays to reviews of food standards, approvals, applications and other core FSANZ duties. Therefore, it is important to ensure there are appropriate guardrails in place to manage FSANZ's workload and resource.

How would this need to be implemented to be successful?

Free text box, no character limit:

To be successful, FSANZ would need to be appropriately funded to obtain the resources to carry out its core remit as established when it was created –to create and develop uniform food standards – and only then negotiations should commence with jurisdictions on such additional work.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.3.

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?

No

How would this need to be implemented to be successful?

Free text box, no character limit:

The ABCL does not support joint agenda setting between FSANZ and FMM. Currently the process for deciding the food regulation priorities allow for FSANZ to provide input into such priorities. If this process were to change, as is being suggested in the IA, the FMM may be in a position to override FSANZ and deprioritise or remove items from FSANZ's workplan. This would undermine FSANZ's authority and could adversely affect its role as an independent statutory authority responsible for their own decision-making process.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

The ABCL does not support joint agenda setting between FSANZ and FMM and believes it could impact FSANZ's roles as an independent statutory authority responsible for their own decision-making process.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

ABCL suggests the setting of food standards and other work undertaken by FSANZ is best directed by FSANZ. We are of the firm belief that, as the expert knowledge base, FSANZ is best placed to guide FM as it has visibility and deep understanding of:

- Standards setting in other country/regional food standards bodies, and multilaterally/globally via Codex and JECFA,
- The latest developments in research and relevant umbrella reviews,
- The food and beverages market in Australia and New Zealand.

ABCL believes FSANZ should bring this rich knowledge base and understanding to FM to help shape the direction of standards and FSANZ's work. In this way, FM can be assured that projects undertaken by FSANZ will be underpinned by a robust evidence base, include a deep understanding of how other regions have dealt with similar issues, and there will be assurance it will be adapted for our market. Also, by working in a more coordinated way within the broader food regulatory framework, this approach ensures that food standards are developed and implemented in a manner that protects the health and well-being of consumers in Australia and New Zealand.

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:

ABCL supports routine engagement between FSANZ and the FRSC to reduce duplication of efforts, as it will help improve understanding of responsibilities. It will also provide stakeholders with greater transparency of policy decision-making processes and technical expertise that FSANZ provides to the FRSC. We also support enhanced industry representation on the FRSC. ABCL are of the firm belief there should be one food and one beverages representative on the FRSC to bring specific sector expertise to that group.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

ABCL is of the view that the following approach would enhance collaboration as well as improve openness and transparency in decision making:

- Clear delineation of roles and responsibilities.
- Transparency between all parties – could yield substantially better regulatory outcomes.
- Earlier involvement of FSANZ and the FRSC to avoid duplication of efforts.

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:

The ABCL believes that FSANZ should only assume a role as database custodian for Australia should it be relevant and within FSANZ's remit. For example, FSANZ is already assuming a role as a database custodian via the Branded Food Database (BFD). Food manufacturers, retailers and other stakeholders support FSANZ by providing data for the BFD, which is being used to monitor and report progress of uptake of the front of pack labelling scheme, the Health Star Rating (HSR).

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

The ABCL does not have specific examples of what data would be useful to curate. ABCL supports the monitoring and reporting of the uptake of HSR currently underway via the BFD.

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 ABCL supports sharing of information with international partners. Such arrangements significantly enhance the ability of regulatory agencies to manage risks effectively. By leveraging shared knowledge and resources, regulatory agencies can conduct more comprehensive risk assessments and develop more effective risk management strategies.

Examples of how this could have a positive impact:

- FSANZ could use risk assessments from relevant international jurisdictions which could minimise resources FSANZ requires when reviewing applications and potentially increase the speed to market for new products, saving both time and money.
- It could limit any technical trade barriers if our standards were more aligned with international partners.

As already mentioned, any international standards or risk assessments as part of applications would need to be consulted with relevant stakeholders, but perhaps provide a more streamlined pathway.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

ABCL is of the view that the focus should be on:

- Leveraging valid and relevant risk assessments,
- Consideration of food standards within an international setting.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

No

Free text box, no character limit:

The ABCL does not support introducing Statements of Intent. We support the development of, and voluntary use of CoP and guidelines to improve consistent interpretation and uniform enforcement of food standards. Within the CoP, formal oversight by regulators such as FSANZ and other stakeholders can be incorporated, resulting in outcomes which provide clarity to industry, serve consumers well and satisfy government that appropriate levels of protection are provided.

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 ABCL does not support Statements of Intent. We believe that CoP provide a more effective and useful guidance for industry, consumers and regulators than Statements of Intent.

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:

The development and continuous maintenance of CoP and guidelines to be used voluntarily would support the consistent interpretation of food standards. Additionally, they will instil greater confidence among industry, consumers, stakeholders and government by ensuring the adequate levels of protection and the safe production of products. However, we note that currently each State and Territory Food Authority is responsible for the enforcement of food standards, and we support this remaining the same but with coordination from FSANZ to support the development and maintenance of guidelines to improve more consistent interpretation and enforcement of the Code.

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 ABCL does not have a formal position on this but support cultural consideration for First Nations and Māori peoples.

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:

The ABCL believes that greater collaboration with jurisdictional enforcement agencies, as well as the development of CoP, in theory, would foster more alignment and a more consistent application of regulations. FSANZ was created to bring about uniformity in food standards setting. Its original intent was as a body to coordinate the development of food standards to create uniformity of standards and their application throughout jurisdictions. The ABCL recommends the development of transparent processes to govern FSANZ-jurisdictional enforcement agency collaboration.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

The ABCL has no further initiatives to add to be considered in Component 2.4.

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

N/A

What are the current delay costs to industry?

Free text box, no character limit:

The ABCL does not have data on the current delay costs to industry.

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:

The ABCL does not have any additional data to provide.

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

The ABCL notes that Option 1 – Retain the status quo, is not a sustainable option and the lack of resources provided to FSANZ cannot remain. In order for FSANZ to be able to carry out its core remit and in order for businesses to innovate and provide more choices to consumers by bringing new products to market, additional funding is required for FSANZ.

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

The ABCL does not have any additional data to provide.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The ABCL notes that it is difficult to determine the effectiveness and impact of Option 2 – Modernise regulatory settings, proposed in this IA, due to the unknown outcomes of Section 5 of the IA. Option 2 proposes an industry-wide levy for the largest 5,000 food businesses in Australia at \$2,000 each which is additional \$10 million per annum for FSANZ. The IA suggests that this cost would be passed on to consumers. The ABCL strongly opposes an industry-wide levy and does not support passing an additional cost onto consumers during a cost-of-living crisis for funding that could be provided to FSANZ from Government.

The ABCL recommends that when the recommendation regarding section 5 is completed, that Option 2 of the cost benefit analysis is updated and is released for public consultation.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

The approach to assessing the degree to which an option solves a policy problem makes sense, however, the assigning of values to 'option 2' is predicated on the policy option being fit for purpose to address the identified issues with FSANZ. Numerous policy options, as identified above in our submission, are band-aid solutions and do not address the root cause or existing systemic issues within FSANZ, i.e. streamlining of application processes will provide no long-term support to address the chronic understaffing of the agency to meet existing or projected workloads.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Please see response above.

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 ABCL does not believe that the delivery risks have been appropriately identified and categorised within the IA and reiterate the need for more transparency around the methodology and risk rating to be able to provide appropriate commentary.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

The ABCL is not in a position to comment on the ratings assigned to each of the sub-problems as we do not have full transparency of the scientific methodology, such as the process utilised to determine the value assigned to each of the sub-problems.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

No

Free text box, no character limit:

The ABCL does not have any additional factors, other than those previously mentioned in our response, that should be captured in a future evaluation.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

The ABCL recognises the need for the FSANZ Act 1991 to be updated, given it has been in place for over 30 years with very few amendments in that time. The ABCL acknowledges that 'Option 1 - Retain the status quo' is not sustainable given the amount of change to the joint food regulatory system since the Act was developed and acknowledges the need to reform. Therefore, the ABCL is supportive of 'Option 2 - Modernise the regulatory settings' however, with qualifications.

The ABCL notes the four core policy problems and the sub-problems that have been identified in the impact analysis (IA) and has provided its response, within this document, to the proposed options for reform. From an industry perspective, below are some key bullet points, summarising our position to the majority of the ideas presented:

- The ABCL believes more transparency is required around the methodology used in the impact analysis to be able to provide a more robust position on the methodology used;
- The ABCL does not support the amendment to the current wording regarding 'public health and safety' and does not believe there is confusion surrounding the definition;
- The ABCL supports the development and implementation of a risk-based framework (with public consultation);
- The ABCL supports delegation of decision-making from the FSANZ Board to the FSANZ CEO;
- The ABCL does not support delegation of decision-making from Food Ministers to other departmental officials;
- The ABCL does not support an industry levy;
- The ABCL recommends funding from Government as per the status quo for other government agencies;

- The ABCL supports better collaboration with other international jurisdictions on risk assessments to help reduce resource and cost burden on FSANZ;
- The ABCL supports open market nominations for the FSANZ Board to consider the inclusion of relevantly qualified private sector and civil society directors.

Finally, given the enormity and complexity regarding the review of the FSANZ Act 1991, the ABCL recommends the opportunity for further public consultation to provide more transparency, particularly surrounding the methodology in how risk ratings are applied, as well as a more robust cost benefit analysis, following the decisions made based on this impact analysis.

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:

N/A

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 15:03:40

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Greg Holland

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Spirits & Cocktails Australia

Which sector do you represent?

Other (please specify)

Other: :
Beverage Industry

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::
[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 spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been "relatively few amendments in that time". We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry of significant change have been adequately into account.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The Budget impacts and cost implications of the reform options have been adequately accounted for and the Australian spirits industry was alarmed that the 'option' of an expanded industry levy to cover the increased operating costs of an unnecessarily expanded FSANZ was introduced into the Impact

Analysis. We also feel that the Impact Analysis failed to adequately account for the stifling effect of increased regulation on innovation and the inflationary effects of an increased cost burden on the food and beverages industry.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

There are elements of the IA that warrant inclusion in FSANZ reforms, but other elements require such significant change, reflect missed opportunities, or present significant risks, that cannot be supported in their current form. We submit that there are widespread and deep concerns amongst stakeholders about the drift and scope creep into non-core areas that should be removed and not included in the Act, namely the proposals that FSANZ's role and function expand into population health.

We note the references in the Act to "public health" and the lack of a definition in the Act and the potential misinterpretation of this term as potentially extending to mean population health. Critically in these and other references, public health is connected to safeguards and consumer protection for the health of the public, not the broader definition of Public Health Medicine or population health. Current references to FSANZ providing "support" to these broader health system objectives is sufficient and appropriate to avoid confusion, dilution or diversion of focus from the core objective of FSANZ.

We therefore do not see justification for the assertion that 'Using the language of regulation, the Act is designed to: protect the public by reducing foodborne illness and promoting population health.

On the contrary, we see no reference or specific objective in the Act to these issues.

There is, nor has there ever been any reference in any version of the Act to 'promoting population health', nor has there ever been any reference to the Public Health medicine objectives as defined by the NHMRC or Faculty of Public Health Medicine.

There is no specific definition of the term 'public health' in the Act and the Impact Analysis concedes that "there is currently ambiguity around FSANZ's broader role in achieving public health" and other broader objectives but we do not agree that this ambiguity extends to the food and beverage sector who have raised significant concerns during the consultation process about extending FSANZ into what the IA concedes is a broader role in public health.

We highlight this particular issue as emblematic of the potential diversion of FSANZ away from its stated purpose and priority objective of food and safety standards that protect the community, provide confidence in the industry yet still permit the industry to operate and grow.

Spirits & Cocktails Australia and the Australian Distillers Association agree that 'the Act is not fundamentally flawed or ill-equipped to deal with the market failures it is designed to address' but that there is always opportunity to improve FSANZ and to safeguard the food that Australians and New Zealanders eat, and the beverages they drink.

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?

Yes

Additional comments (optional):

The risks associated with dragging FSANZ into the population health area has been recognised by many submissions through the public consultation process but perhaps the most telling are the comments made on this issue by the South Australian Government submission and Victorian Government submission.

In its submission the Victorian Government stated that: "FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient its focus to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

We completely agree with the concerns raised by the Victorian Government and call on the Commonwealth to take heed of this warning.

The Food Governance Node submission states that “We do not support this expansion of FSANZ’s role and responsibilities. FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas.”

These submissions highlight the significant risks of dilution and diversion of FSANZ focus and resources away from the core objectives of protecting the health of the public.

Critically, the IA summarises the distinction between ‘public health’ as the health of the public as opposed to the sectoral and specific reference defining it as population health with an extension of standards and labelling into preventative health and epidemiology. Specifically, the IA acknowledges that “food consumption patterns” are an important driver of “broader public and population health” and we would agree that these population health objectives are part of a much broader definition that extends beyond the necessary objectives of the Act.

Spirits and Cocktails Australia disagrees with those who incorrectly assert that “the Act in its current form does not enable the food regulatory system to meet its primary goal of protecting public health - specifically long-term health and preventable diet-related disease.” The food standards are encapsulated in the Australia New Zealand Food Standards Code as mandatory requirements that cover issues such as:

- food safety and handling
- food labelling and advertising
- food composition, including contaminants, residues, and additives.

These food standards clearly focus food regulation on health and safety, as opposed to population health objectives and activities.

In summary, we see significant risks in the effective operation of the Food Standards regulation and that it is not a simple process to redefine the Act and to shoehorn population health objectives such as acute and long-term health elements into the Act.

What would be the impact of clarifying the definition of ‘protection of public health and safety’ within the Act?

Negative

Additional comments (optional):

Spirits and Cocktails Australia support well-considered reform that maintains a high level of integrity in Australia’s food regulatory system and, in turn, maintains community confidence while delivering important efficiencies. All efforts must be made to ensure regulatory systems remain fit-for-purpose, risk-based and proportionate, and provide certainty and clarity.

On the issue of ‘public health’ we agree that “Clarifying the definition of ‘public health promotion and ‘public health and safety’ within the Act – and aligning this definition with other instruments such as the FRA – may enhance clarity around the role of food standards in food regulation and policy” however we do not believe that this definition should be extended to include the sectoral and specific objectives of population health.

In its submission to the consultation process, Alcohol Beverages Australia (ABA) warns that the proposed reforms expand FSANZ’s role to that of a directive-setting preventative health agency and that this will only increase the regulatory burden for industry, while increasing cost and reducing choice for consumers, including in export markets: “ABA believes the more expansive interpretation of public health as it relates to food safety, into contemporary approaches to preventive health in addressing issues such as diet and obesity creates a number of significant problems: it is inconsistent with the focus of FSANZ’s responsibilities; it shifts resources away from industry priorities around innovation and assessing applications, and; it duplicates the work of other government agencies, including at the state and territory level.”

In its submission the ABA does not support changing the wording in s 3 or s 18 of the Act to broaden the scope of public health and that FSANZ is already empowered under s 3(c) to ensure consumers have adequate information to make informed choices, including information about longer-term health and chronic illness as a result of diet, and this has led to the development of health star ratings, as an example. “Public health’ should be only interpreted under its original intention which is to first satisfy the primary objective of being related to food safety.”

Produce Marketing Association Australia New Zealand submission states that the focus on FSANZ should not extend to non-food safety population health: “Currently there is opacity around FSANZ’s role in supporting PH&S objectives and its involvement in non-food safety issues, such as promoting healthy eating and protecting consumers from diet-related diseases. This role should remain the protection of the health and safety of consumers by reducing risks related to food and enabling consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled.”

In addition, Spirits and Cocktails Australia is concerned that this proposal may be at odds with the ‘Agreement Between the Government of Australia And The Government Of New Zealand Concerning A Joint Food Standards System’ (the Treaty) , namely (c) export requirements relating to third country trade and (5) The provisions of this Agreement shall in no way affect the cooperation between the Member States and their agencies on health and food-related issues falling outside the Australia New Zealand Food Standards System established by this Agreement.

The Treaty clearly limits FSANZ to the development and maintenance of joint food standards that may include any related guidelines, codes of practice, and any supporting material, and while FSANZ must be able to engage internationally, it has neither the authority nor the administrative or functional direction to engage in international advocacy.

As with a number of proposals put forward in the RIS and the IA, Spirits and Cocktails Australia and the Australian Distillers Association do see the need

for extending FSANZ into areas outside of its core business but more importantly we significant risks associated with overextending FSANZ and compromising its effectiveness, and/or increasing the costs and regulatory burden that then negatively impact on the industry and consumers.

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?

No

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Spirits and Cocktails Australia believes that FSANZ is a high performing organisation that does an excellent job in the administration of the Act and regulatory functions and responsibilities, while acknowledging that any improvements in the clarity and transparency of the food regulation and standards will benefit the industry, consumers and the community.

Guidance and commentary may provide clarity and direction from Government on health policy and food regulation, but it is important to remain cognisant that the Australia and New Zealand Ministerial Food Ministers Forum cannot amend or alter the Act or direct FSANZ to act outside of the limitations and directions of the Act.

In Section 15 of the Food Standards Australia New Zealand Act 1991, a Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers and the Authority must comply with those directions but a written statement of the reasons for giving the direction must be presented to each House of the Parliament within 15 sitting days of that House after the direction is given, and the Minister must consult with the Forum on Food Regulation and a direction given under subsection (1) is not a legislative instrument.

The remit of the Australia and New Zealand Ministerial Forum on Food Regulation and the Food Regulation Standing Committee is limited to food standards and policy guidelines that support food standards, as defined as food safety and handling, food labelling and advertising, food composition, including contaminants, residues, and additives.

Critically for the proposition that 'public health' includes population health, the current Terms of Reference for the FRSC clearly make the distinction between the core focus on food standards and other broader policy considerations by stating that the purpose covers coordinating policy advice, advising on strategic issues relating to the cooperative Food Regulation System, operating as a forum for collaboration, planning, evaluation, and information sharing, and importantly "ensuring a consistent approach to the implementation and enforcement of food standards."

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 IA has identified best practice models to promote greater inclusivity and respect for Indigenous perspectives while enriching the evidence base with valuable insights and contributing to a safer, more effective and culturally sensitive regulatory system.

We support the inclusion of reference recognition of indigenous culture and expertise, where those insights and contributions align and contribute with the existing Objectives of the Act to food standards.

Spirits & Cocktails Australia and the Australian Distillers Association recognise the disparity in socio-economic outcomes for First Nations Peoples in Australia, New Zealand and elsewhere. The Australian spirits industry is committed to responsible and legal consumption of alcohol in our communities, especially those in indigenous communities, and all regional and remote areas.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

There is significant cause for concern that under the proposed inclusion – and prioritisation – of population health objectives, especially with the potential for a new agency, there could be significant public policy changes that bypass the Australian parliaments and the elected representatives of the Australian

people, namely:

1. Sugar Tax.
2. Restrictions and potentially bans on 'unhealthy' foods.
3. Environmental restrictions (George Institute 'dolphin-safe tuna' fishing restrictions).
4. Promotion of fair trading in food.

The Obesity Policy Coalition wants to extend the objectives of Public Health Medicine in the FSANZ Act to prioritise long-term public health issues, including dental health.

We would all agree that obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments but that doesn't mean that food standards regulation should be extended to cover all areas of health.

All of these will increase complexity and costs, that will be passed onto consumers.

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:

The industry acknowledges that if done correctly, and in consultation with stakeholders, FSANZ could develop a risk framework that could allow low-risk applications and proposals to undertake an expedited process for approval.

Spirits & Cocktails Australia and the Australian Distillers Association supports, in principle, the proposal that a non-legislated risk framework could drive the process in relation to applications and proposals, noting that a provision for urgency should be retained. Such a framework should ensure that low-risk modifications or new standards should expedite processes and allow these products into the market in a timely manner. Should this proposal be accepted, stakeholders should be consulted separately on the creation of an agreed risk framework, including around criteria, thresholds and processes, and any approaches to cost recovery that might flow from the changes to process.

According to the Australian Food and Grocery Council's submission, it has long been recognised that regulatory measures range from self-regulation through to black letter law based on the principles of risk assessment and proportionate regulatory responses. In the application of food regulation this was clearly recognised and reflected in the Blewett Review of food labelling where labelling issues were ranked in a risk hierarchy. Food safety issues are considered to be high risk requiring mandatory regulatory requirements whereas 'values issues' are more appropriately dealt with through self-regulatory measures. This was recommended by the Blewett Review reaffirmed most recently in the Policy Guideline on Food Labelling to Support Consumers to make Informed Healthy Food Choice.

A streamlined approach based on risk should be further developed including the use of Codes of Practice and guidelines where appropriate.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Positive

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Not Answered

Free text box, no character limit:

In principle, the Australian spirits industry sees value in streamlining current pathways to amend food standards, including making and accepting risk assessments from overseas jurisdictions.

Spirits & Cocktails Australia and the Australian Distillers Association see potential value reducing the administrative burden associated compiling the required evidence base to support a comprehensive risk assessment by FSANZ. We agree that FSANZ should explore how the burden could be minimised if FSANZ had the statutory ability to recognise and adopt international risk assessments.

Under the proposal the Act could be amended to enable FSANZ to formally recognise and adopt the assessment and determinations of 'overseas bodies' (with appropriate statutory controls). This could be limited to specific international bodies (such as Codex), specific assessments (such as chemical risks assessments undertaken by the Joint Food and Agricultural Organization of the United Nations / World Health Organization Expert Committee on Food Additives) or could be a more general power.

This approach could reduce duplication of effort where well-established and evidenced standards or assessments from other countries exists. It could also shorten the time and effort needed for reviews and approvals, currently a major barrier for market entry of new products.

This change would bring FSANZ into alignment with provisions in place in other regulatory areas (such as the Therapeutic Goods Administration), which would in turn simplify the regulatory experience for businesses.

However, the support of the Australian spirits industry is conditional on the only circumstance these could be used was to alleviate the administrative burden for industry to compile evidence.

Therefore, these processes should only be utilised at the request of or with the consent of industry as the regulated entity, and with a mechanism that would allow a regulated entity to seek ministerial review of an amendment. This would ensure that industry is satisfied with the experience of a food standards in an overseas jurisdiction, that problems have not emerged as a result of its adoption overseas, and that any relevant experience by industry in that overseas jurisdiction was not excluded in any FSANZ determination.

Overseas legislation or regulation cannot be used to overturn the FSANZ Act, or to impose policy, regulatory or legal conditions and obligations that are inconsistent or not specified within the existing legal and legislative instruments of the Australian food standards system.

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:

In developing standards FSANZ must consider: the best available scientific evidence, consistency with international standards, the desirability of an efficient and internationally competitive food industry; the promotion of fair trade and policy guidelines set by the Forum.

The Board of FSANZ approves all food standards.

The automatic recognition of select international standards immediately raises questions about how the standards would be selected but of greater concern is that automatic recognition could bypass the consultation process, avoiding scrutiny by government and industry. This truncated process could place enormous pressure on FSANZ and greatly increase risks associated with lack of oversight and input to review international standards for application in Australia and New Zealand. It is suggested that such developments internationally best be accounted for when periodic reviews are performed and thus subject to more contemplation and engagement than automatic adoption.

There are a number of submissions that raise concerns about this proposal and on balance, while there may be benefit in identifying and considering international best practice, there must be review and consultation before adoption in Australia or New Zealand.

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:

Spirits and Cocktails Australia offers potential Support for this proposal.

In developing standards FSANZ must consider: the best available scientific evidence, consistency with international standards, the desirability of an efficient and internationally competitive food industry; the promotion of fair trade and policy guidelines set by the Forum.

The Board of FSANZ approves all food standards.

The automatic recognition of select international standards raises questions about how the standards would be selected but of greater concern is that automatic recognition could bypass the consultation process, avoiding scrutiny by government and industry. A truncated process would place enormous pressure on FSANZ and greatly increase risks associated with lack of oversight and input to review international standards for application in Australia and New Zealand.

The Industry Advisory Group for the New Zealand Food Safety Science and research Centre state in their submission: "We have reservations about automatic adoption of selected overseas standards as the ability for stakeholders to comment on proposed new measures is important to maintaining relevant and appropriate measures for Australia and New Zealand. Additional pathway to bring very low risk products to market – as with the previous two proposals, it is not clear what an additional pathway might comprise but any approach that would expedite bringing products to market is supported. We also support industry self-substantiation of bringing low risk products to market."

According to the Brewers Association "Regarding automatic adoption of international standards, The Brewers Association agrees that FSANZ should generally be aligned with international standards. However, not all standards will be relevant to the Australia and New Zealand markets and some may be incomplete or more restrictive than current regulatory settings. Therefore, the Brewers Association's view is that international standards should only be adopted where they are no more restrictive than current regulatory settings and the adoption process allows for the specific diet and circumstances of

New Zealand and Australia to be taken into account. The Brewers Association however does have concern that adoption of any regulation without consultation is not a favourable approach, that input should be sought to those effected by any new regulation in any instance.”

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia offers potential Support for this proposal.

Many of the regulatory systems revised had features that gave standard-setting bodies and regulators the flexibility to help bring new products to market efficiently and safely. For example, the US introduced a Generally Recognised as Safe (GRAS) pathway to expedite the introduction of very low risk food substances which are analogous to other products already approved and available.

In practice these arrangements can operate as a limited industry self-substantiation scheme.

The Australian spirits industry supports the current regulatory status quo for industry self-substantiation of low-risk ingredients and notified self-substantiation food health relationships. We have concerns about the introduction and inclusion of additives under an industry self-substantiation scheme if they are not being proposed by industry but instead imposed on industry.

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

What would be the impact of introducing new pathways to amend food standards for you?

Neutral

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Not Answered

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association see potential value in an additional pathway being developed to bring very low risk products to market, but the new pathway will need to be developed in consultation with industry and relevant stakeholders to ensure that it is appropriate and suitable for industry and consumers.

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:

Conditional Support:

Spirits and Cocktails Australia offers In-principle support for this proposal. The Australian spirits industry supports the use of risk-based approaches to determine the most appropriate pathways to a regulatory decision, in order to fast track low-risk, minor variations to food standards without compromising the objectives around food safety and an internationally competitive food industry.

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The responsibilities of the Food Minister's Meeting (FMM) - the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum) - are separate and distinct from the roles and responsibilities of departmental officials in the food standards system.

It is also unclear exactly which “departmental officials” are envisaged in the RIS as taking responsibility for decisions previously assigned to ministers.

There is also significant potential for Conflict-of-Interest when ministers and officials have clear accountabilities to each other in the food standards system, especially the FSANZ standard setting process.

Under the Operating Procedures, the Forum is supported by the Food Regulation Standing Committee (FRSC) which is responsible for coordinating and developing policy advice to the Forum and ensuring a nationally consistent approach to the implementation and enforcement of food standards. The FRSC has established the Implementation Subcommittee for Food Regulation (ISFR), which oversees a consistent approach to implementation and enforcement of food regulations and standards.

These sub-committees are subordinate to the Ministers with clear reporting lines and accountabilities to the elected ministers, however delegating any decisions to departmental officials, even assuming that they are serving on relevant committees could be an abrogation of ministerial responsibility, could lead to poor governance and potential conflicts-of-interest.

What would be the impact of streamlining decision-making arrangements for you?

Neutral

Free text box, no character limit:

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Spirits and Cocktails Australia and the Australian Distillers Association take the view that if the delegations are appropriate within the legislative responsibilities and established as clear and accountable delegated authorities within FSANZ organisational procedures then that is a matter for the FSANZ Board but in line with best practice governance Directors cannot delegate their statutory or fiduciary responsibilities.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Not Answered

Free text box, no character limit:

According to the IA, First Nations and Māori businesses cannot access food markets due to an uncertainty about how to demonstrate the safety of traditional foods, and this proposal would support more businesses to bring traditional foods to market.

First nations and maori cultures are preserved verbally. Guidelines could be established on how FSANZ should consider such evidence when developing or reviewing standards.

Further guidance material could be developed on how traditional foods can be assessed for safety. This could include clarification on when a traditional food would need to go through an alternative food process, for example a traditional food used in a non-traditional way. This would not impact the standard of safety to which foods are held.

The Australian spirits industry is a great promoter of native botanicals and ingredients in the production of innovative and award-winning products such as Finger Lime Gin and Ant Gin, and the industry will continue to collaborate with indigenous people in the development of products that celebrate and showcase their culture through traditional foods and ingredients.

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?

Yes

Free text box, no character limit:

The Australian native bushfood and botanicals industry is a significant and growing sector. In 2019-20, sales proceeds for this industry were estimated at \$152.5 million, and they are projected to grow to \$300 million by 2025.

Research by the University of Sydney has found that growing native bush foods could reverse environmental degradation and offer Australia better food security, according to new research, but concerns remain around commercial production.

There is an exciting opportunity for Australia’s spirit industry to align indigenous culture and native products with ESG focussed products. Indigenous ingredients native to a particular location offer brands a distinctive and unique selling point.

Ultra-local botanicals have emerged as a signature for brands looking to be authentically rooted in a culture or geographic region. However, a number of brands are now working with local communities, too, in a bid to be more responsible in their sourcing practices.

Whether it's in limited-edition versions of global brands or niche, region-specific launches, using ingredients from a specific place can help brands to convey their brand story, or tap into and address larger consumer concerns such as sustainability, fair labour practices and the environment.

According to the NSW Government's NSW First Nations Business Sector a key barrier hindering growth and development of the native bushfoods and botanicals industry include unrealised opportunities to improve the marketing of native bushfoods, production methods and technologies; and the need to develop business models that can scale the industry in ways that sustain First Nations knowledge, culture, practices, and control .

The development of guidance materials would help the Australian spirits industry engage and collaborate with peak indigenous food advocacy bodies such as the First Nations Bushfood and Botanical Alliance Australia (FNBBAA).

The growing international demand for authenticity and premiumisation extends to tourism that can drive significant growth in demand for cultural and natural tourism. The potential growth in the promotion of indigenous produce in Australian spirits presents a significant opportunity to develop First Nations businesses.

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:

With the review finding that FSANZ already has challenges in resourcing to meet its core purpose, proposed changes to expand FSANZ into areas other than food safety must be excluded from the reforms proposed to the Act.

According to the IA, resourcing constraints facing FSANZ – exacerbated by the statutory timeframes that FSANZ must meet for applications - make it difficult to progress reviews of standards in a timely manner and lead to their effective de-prioritisation in FSANZ's workplan.

FSANZ is primarily funded through an Australian Government appropriation and receives additional funding from the New Zealand Government, special projects and through cost recovery. Australian states and territories do not directly contribute to FSANZ's revenue stream. In recent years, FSANZ's operating budget has declined in real terms, which has forced FSANZ to prioritise its resources to process applications within statutory timeframes. Total FSANZ resourcing has reduced from AUD \$27 million in 2011-2012 to approximately AUD \$20 million in 2019-2020. This is despite Health Portfolio Government Appropriations having almost doubled over the same period – moving from approximately \$1 billion to approximately \$2 billion per annum, and also the fact that the number of projects undertaken annually by FSANZ has increased by approximately 56% over the same period. Current holistic reviews underway at FSANZ include infant formula and sports foods. We would note that 15 years have elapsed across both proposals without either being completed. We therefore question whether reviews always need to be 'holistic' and could instead be more narrowly focussed to ensure expedition, where appropriate to do so.

Spirits & Cocktails Australia and the Australian Distillers Association suggest that this is the wrong answer to the right question.

Firstly, these statements in the IA make it clear that FSANZ cannot afford to be saddled with additional requirements, especially when those extra activities are not aligned with the core objectives of the Act.

Secondly, consideration needs to be given to the demands given to FSANZ, and how the Authority balances the standard setting process with additional directions and requests from government and others.

Thirdly any unnecessary reviews of existing standards should not compromise the ability of the Authority to undertake the work for new and priority food standards.

Therefore, Spirits Australia offers conditional support for this proposal subject to further review and consultation.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Yes

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association agree that FSANZ should better use other regulatory instruments, such as guidelines or non-binding codes of practice, where such instruments would achieve the Authority's objectives.

We support FSANZ being able to recognise voluntary measures or codes of practice. Unlike legislative instruments, codes of practice should not be mandatory or enforceable, but can reflect an agreed approach that has the support or been adopted by the majority of industry including by market share. These codes can then serve as a demonstration of best practice by businesses to the market, but also give flexibility to small business to adopt these initiatives over time as they grow into more profitable entities.

These codes of practice should not be around the prevention of acute food borne illness, which require binding and mandatory instruments, but in areas like the provision of general, non-essential information to consumers, where the information may already be available on the majority of the products in market, and/or where consumers would otherwise have access to it, or know how to find it, in any case. FSANZ's adoption or creation of these codes of practice would signal their importance to stakeholders and give impetus to industry stakeholders to adopt them but allow flexibility for smaller businesses and new entrants to the market.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia supports In-Principle this proposal.

In order to make FSANZ more agile, resilient and fit-for-purpose, the draft RIS proposes streamlining FSANZ's governance and operations through amendments to the composition and selection of the FSANZ Board.

We note the proposal to create a more skills-based Board, a consolidation of the Board to eight people, and a move to virtual Board meetings. ABA does not have a strong view on these proposals; however, in any recalibration of the FSANZ Board, the Australian spirits industry would like to see: An increase in representation in the Board of members with direct experience in the food industry. As industry is the regulated entity, we believe the Board should have a number of members (we suggest 50%) who can appreciate the time, cost and complexity of food safety regulation on business, including small business, and that this experience would help to ensure that regulatory decisions are focused on the least burden to industry required to achieve objectives; Ministers remain responsible for the final sign off on all Board appointments, as ministers have the duty to consider the necessary balance and skills-set of the Board necessary to ensure FSANZ's meets its objectives, taking into consideration whole-of-government perspectives.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Not Answered

Free text box, no character limit:

The Australian spirits industry would like to see an increase in representation in the Board of members with direct experience in the food industry. As industry is the regulated entity, we believe the Board should have a number of members (we suggest 50%) who can appreciate the time, cost and complexity of food safety regulation on business, including small business, and that this experience would help to ensure that regulatory decisions are focused on the least burden to industry required to achieve objectives.

We note that Ministers remain responsible for the final sign off on all Board appointments, as ministers have the duty to consider the necessary balance and skills-set of the Board necessary to ensure FSANZ's meets its objectives, taking into consideration whole-of-government perspectives.

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:

The Australian spirits industry is concerned by this proposal, which is a response to long-term decreases in funding in real terms that removes a fee-for-service activity.

Annual reports from FSANZ show that the cost recovered is about 5% of total revenue but that this provides critical sustenance to product development and innovation pathways. FSANZ own research highlight the importance of this to ensure a competitive food industry that remains globally competitive. Deleting this pathway could have serious short-, medium- and long-term implications for the viability of Australian Food manufacturing. We would note there has been recent and current government effort directed at ensuring the ongoing global competitiveness and productivity of the manufacturing sector. To remove this would be counterproductive to those initiatives.

Spirits & Cocktails Australia and the Australian Distillers Association remain unsure of the evidence that current pathway has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions. Therefore, we do not see the rationale or the imperative to remove the expedited approvals pathway to address workload prioritisation.

The IA states that Section 146(6)(b) could be removed to revoke the option for applications to be expedited (which is subject to a fee).

The IA concedes that "this means that FSANZ would in fact forego a source of revenue" but is justified because it would mean it would not be bound to commence assessment of paid applications as quickly, noting that the Act requires applications to be assessed within 12 months for a major procedure (nine months for a general or high level health claim or three months for a minor procedure), and this timeframe commences at the time the fee is paid for paid applications.

Of even greater concern is the statement that:

"This change would remove an avenue by which businesses can currently gain greater certainty as to when they can launch products and plan for the future."

The Australian spirits industry is concerned about the removal of a pathway that supports greater certainty to promote innovation and investment.

We also do not agree that this needed to "potentially release capacity for FSANZ to focus its resources on other initiatives, such as proposals and project work."

Many of the regulatory systems reviewed had features that gave standard-setting bodies and regulators the flexibility to help bring new products to market efficiently and safely. For example, the US introduced a Generally Recognised as Safe (GRAS) pathway to expedite the introduction of very low risk food substances which are analogous to other products already approved and available. In practice these arrangements can operate as a limited industry self-substantiation scheme.

The Australian spirits industry supports the current regulatory status quo for industry self-substantiation of low-risk ingredients and notified self-substantiation food health relationships. We have concerns about the introduction and inclusion of additives under an industry self-substantiation scheme if they are not being proposed by industry but instead imposed on industry.

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:

Spirits and Cocktails Australia strongly opposes this proposal.

According to the IA a levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia (or those generating over a certain threshold of revenue per year). This could be appropriate as standard-setting and other activities contribute to maintaining high standards of food safety and quality, reputation of the Australian and New Zealand food system and marketability of food products through a combination of rigorous pre-approvals and post-market support such as surveillance and food recall coordination.

Activities that an industry levy could support which would have direct industry-wide benefits include the production of guidance materials to assist with compliance, international harmonisation work to adopt and align with international standards expanding trade opportunities, contribute to supporting more timely consideration of standard reviews, enhanced monitoring of the food supply to identify trends and reporting on the state of the food supply. A levy could also support FSANZ to enhance and streamline its delivery of services to the industry, allowing it to undertake projects such as making the Food Standards Code more user friendly and accessible.

Should such a levy be implemented, FSANZ's existing (and any additional industry cost recovery mechanisms proposed below) industry cost recovery mechanisms – namely, the cost to expedite applications or to capture an exclusive commercial benefit – could be discontinued.

We object to this proposal being put forward in the IA as it was not put forward for consideration earlier.

This proposal was not raised in the Draft Regulatory Impact Statement. The reference in the RIS was limited to a levy for FSANZ becoming an engine of data and intelligence and this proposal was not included in the IA but the levy has been.

There was no reference in the RIS questions to an industry wide levy.

There are no submissions that propose or recommend an industry-wide levy.

The Terms of Reference for the Review ensuring any proposed changes to the regulatory system imposes the least burden on business to achieve the stated objectives of the regulation and specific consideration is given to the impact on small businesses and only "Cost recovery models for industry-initiated work" with an industry wide levy clearly extending beyond this limitation, ruling it clearly out of scope.

The Impact Analysis specifically refers to the wine industry levy as an example of how an industry levy could be applied to the food and beverages sector to fund FSANZ. The Australian spirits industry is extremely concerned about the inclusion of an industry and the reference to the wine industry levy as a potential model for FSANZ.

Case study (as set out in the Government IA): The Australian Grape and Wine Authority (AGWA) Wine Grapes Levy. It is highly inappropriate to refer to the wine industry levy as a reference for a FSANZ industry levy. The Australian and New Zealand wine industries are part of the FSANZ food (and beverage) regulatory system, but the Wine Grapes Levy does not, and has never, applied to the funding of FSANZ.

If a new industry-wide levy was introduced, then the wine industry would be paying two levies.

The wine grapes levy was first introduced 22 March 1929 and both Wine Australia and Plant Health Australia (PHA) are responsible for the expenditure of the wine grapes levy. The wine grapes levy comprises Emergency Plant Pest Response (EPPR), marketing, PHA membership and research and development.

Spirits and cocktails Australia and the Australian Distillers Association are unclear how a Wine Grape Levy could be applied to the funding of FSANZ when the Australian spirits industry does not have an equivalent to Plant Health Australia.

It is also unclear if this proposal is recommending the establishment of research and marketing campaigns being funded by the FSANZ levy, or if FSANZ would become responsible for international marketing of the food industry, let alone how any of the functions supported by the Wine Grapes Levy would be consistent with the FSANZ Act, let alone the food regulatory system, or how they are within the scope of the Terms of Reference for the review.

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:

Spirits and Cocktails Australia strongly opposes this proposal and states that an industry levy would not be fair, consistent or feasible to administer, and that it is only being put forward as a justification to support the unnecessary expansion of FSANZ into non-core activities such as population health and that the costs for industry and consumers have not been adequately accounted for.

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:

Spirits and Cocktails Australia strongly opposes this proposal and states that an industry levy would not be fair, consistent or feasible to administer, and that it is only being put forward as a justification to support the unnecessary expansion of FSANZ into non-core activities such as population health and that the costs for industry and consumers have not been adequately accounted for.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

We note that based on the potential for additional costs of operation and administration for FSANZ to divert focus and resources from the core activities and objectives of the Act, the Victorian Government is proposing that if a fee-for-service model is established for this it should take an equitable approach such as a tiered fee structure.

This fee-for-service proposal put forward by Victoria was a specific cost recovery mechanism and not a general charging model for all applications.

We highlight the suggestion that a charge-based access be introduced, and we wonder how many of those who submitted in favour of the proposal would continue to support it if they knew they would have to pay for it?

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:

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?

No

Free text box, no character limit:

According to the RIS, jurisdictions undertake significant work to hone a risk-based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

That seems a fairly innocuous activity, however the RIS goes further.

The RIS highlights that FSANZ currently has the statutory remit to coordinate food recalls in Australia, but only at the request of States and Territories. Stronger collaborations between FSANZ and the jurisdictions (including New Zealand) will facilitate more timely identification of risks and enable swift responses to better protect the public and minimise reputational damage to industry.

According to the IA, FSANZ currently works with the jurisdictional enforcement agencies in Australia to coordinate an average of 90 recalls per year, primarily to address undeclared allergens and microbial contamination. This incurs an average annual cost to FSANZ of \$1,190,000.

The IA proposes that FSANZ could charge Australian States and Territories a levy, based on the number of food businesses or the average number of food recalls that are required in that jurisdiction.

The Australian spirits industry is comfortable with the proposal that FSANZ has a statutory function to, either in consultation with states and territories, or on its own initiative, the ability to coordinate action and respond to food incidents and food recalls. We would support this as a shared power with states and territories, and not to be introduced to replace the power of states and territories.

Spirits & Cocktails Australia and the Australian Distillers Association does not support FSANZ's remit to be expanded into the area of enforcement, either with specific enforcement functions for select food standards, or in the role as a single, binational regulator. We do not believe the draft RIS has demonstrated a problem with the current enforcement responsibility framework, either at the state and territory level, or the federal regulators, such as the ACCC, who enforce against deceptive and misleading claims by companies including on issues of food safety.

We believe the proper role for FSANZ is to undertake more education for industry on how to adhere to new food standards through non-binding guidance notes or other advice, and that enforcement agencies could either contribute to these notes or use them as a basis for enforcement-related decisions.

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

A number of New Zealand submissions were not supportive of FSANZ coordinating recalls primarily because New Zealand already has a system involving a single national regulator for recalls, with Wakatu Incorporation warning that "There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ with respect to New Zealand.

According to Queensland Government's Food Safety Standards and Regulation Unit, the option to permit FSANZ to coordinate food incident and recall responses on its own initiative may present a negative outcome for food safety enforcement agencies such as Queensland Health and Safe Food Production Queensland.

It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

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:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

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?

No

Free text box, no character limit:

The IA proposes that FSANZ could implement a cost recovery mechanism for the FMM to request additional proposals added to FSANZ's workplan, where these exceed the number that can be normally absorbed and agreed in the joint agenda-setting activities proposed in Component 2.4 in Section 5.2.4.

This can support FSANZ to dedicate resources to additional proposals without interrupting other initiatives on its workplan.

This proposal introduces a state and territory fee-for-service model that could add additional workload on FSANZ that could divert it away from core functions and activities.

We note that according to the IA, the joint agenda-setting with the jurisdictions would remove or abandon lower priority items to focus on other work such as the National Preventative Health Plan 2021-2030.

This is exactly the sort of diversion of FSANZ that was highlighted in the earlier sections on public health and not population health, with preventative health a core priority of population health and not food standards.

The IA also concedes that the jurisdictions could fund FSANZ to underate 'project work' on non-core issues such as "emerging trends in food".

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Negative

Free text box, no character limit:

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

A number of New Zealand submissions were not supportive of FSANZ coordinating recalls primarily because New Zealand already has a system involving a single national regulator for recalls, with Wakatu Incorporation warning that "There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ with respect to New Zealand.

According to Queensland Government's Food Safety Standards and Regulation Unit, the option to permit FSANZ to coordinate food incident and recall responses on its own initiative may present a negative outcome for food safety enforcement agencies such as Queensland Health and Safe Food Production Queensland.

It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

How would this need to be implemented to be successful?

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

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:

In the South Australian Government submission this proposal is not supported: "This component is not supported in line with Option 3 not being supported. While FSANZ's role in co-ordinating food recalls is important and fits well with FSANZ, decisions on food incidents and recalls should be made by the regulators i.e. at a jurisdictional level. This is because the regulator knows the history of the business, will have an existing relationship, is more likely to know the supply chain and therefore makes the recall process more effective and efficient. This is especially important in the case of small businesses. Additionally, SA works closely with local government who co-regulate in SA. It is important that in the interest of an efficient and timely response, jurisdictions retain the lead in this role."

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It is unclear how the role of coordinating recalls can be separated from powers to enforce such and what escalation pathways or consequences for un-cooperative food businesses might be. It is noteworthy here that FSANZ role in enforcement appears to not be advancing any further so perhaps this concept should also follow suit.

How would this need to be implemented to be successful?

Free text box, no character limit:

Spirits and Cocktails Australia agrees with the state governments that this expansion of scope is not necessary and therefore a levy is not required.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

No

How would this need to be implemented to be successful?

Free text box, no character limit:

We note that according to the IA, the joint agenda-setting with the jurisdictions would remove or abandon lower priority items to focus on other work such as the National Preventative Health Plan 2021-2030.

This is exactly the sort of diversion of FSANZ focus and resourcing that was highlighted in the earlier sections on public health and not population health, with preventative health a core priority of population health and not food standards.

The IA also concedes that the jurisdictions could fund FSANZ to underate 'project work' on non-core issues such as "emerging trends in food".

Regional Public Health New Zealand, University of Auckland Faculty of Medicine and Health Sciences Public Health Nutrition Group and other population health advocates make it clear that a joint agenda setting meeting would resource and prioritise work that protects public health, long-term health, and diet-related preventable disease in particular.

As the Brewers Association highlights in its submission: "The Brewers Association does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ."

New Zealand Wine does not support this proposal: "NZW does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ. In NZW's view, this would further compromise the already threatened independence of FSANZ."

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

Spirits and Cocktails Australia recognises the legal primacy of the Act and the independence of FSANZ and does not support this proposal.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Spirits and Cocktails Australia recognises the legal primacy of the Act and the independence of FSANZ and does not support this proposal.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

Food policies are the guiding principles for addressing significant food issues and Food Standards Australia New Zealand (FSANZ) must consider the policy guidelines when developing standards.

Food Regulation Standing Committee (FRSC) supports the Food Ministers' Meeting by coordinating and providing policy advice and ensuring a consistent approach to implementing food standards.

Clearly the remit of the Forum and the FRSC is limited to food standards and policy guidelines that support food standards, as defined as food safety and handling, food labelling and advertising, food composition, including contaminants, residues, and additives.

Critically for the proposition that 'public health' includes population health, the Terms of Reference for the FRSC clearly make the distinction between the core focus on food standards and other broader policy considerations by stating that the purpose covers coordinating policy advice, advising on strategic issues relating to the cooperative Food Regulation System, operating as a forum for collaboration, planning, evaluation, and information sharing, and importantly: "ensuring a consistent approach to the implementation and enforcement of food standards."

FSANZ currently attends Food Regulation Standing Committee (FRSC) policy working groups to provide early advice on matters that could progress to regulation but the industry earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.

The New Zealand Beverages Council is supportive of FSANZ's earlier involvement with FRSC to understand responsibilities and minimise duplication of efforts, as they believe this could provide stakeholders with greater transparency of policy decision-making process and technical expertise that FSANZ provides to the FRSC.

The Brewers Association submit that earlier stages of the FSANZ application/approval process are where efficiencies may be gained. Obtaining Ministerial approval does not significantly weigh on FSANZ's resources, nor does it dramatically slow down decision making.

The Australian spirits industry believes the role and Terms of Reference for the Food Regulation Standing Committee (FRSC) should also be reviewed and brought into line with the Review of COAG Councils and Ministerial Forums.

Under the FRSC ToRs: As part of its overarching purpose FRSC:

- o manages projects and resource to deliver on agreed Forum and FRSC priorities.
- o sets priorities and undertakes annual planning for the whole of System.
- o monitors and measures performance of the System.
- o conducts environmental scanning.
- o directs intelligence gathering; and
- o provides advice to inform strategic planning for the System.

The industry believes the current operations of the FRSC simply create an additional layer of administration, and that these functions should be the responsibility either of the Food Ministers' Meeting, or of FSANZ itself. We believe the principles of the COAG review reflected a desire to abolish unnecessary administration, and that the Department can provide meeting support while Ministers set priorities (including the agenda, another COAG reform principle) and monitors performance, and FSANZ is responsible for the other functions.

The Brewers Association does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ.

New Zealand Wine does not support joint agenda setting with the Ministerial Forum, nor does it support early engagement between FRSC and FSANZ. In NZW's view, this would further compromise the already threatened independence of FSANZ. The statutory division between policy development and standards setting under the FSANZ Act is appropriate.

The New Zealand Food and Grocery Council also warns about the unnecessary meeting between FSANZ and the Food Ministers, especially "since Ministers have political affiliations and membership regularly changes, it is likely that their interests in the FSANZ work programme could change also." We believe that the priorities and objectives are already set out in the Act.

As an example of the risks associated with setting agendas and direction to FSANZ Dieticians Australia has proposed that a periodic joint agenda-setting meeting between FSANZ and the Food Ministers could be used to promote population health objectives and that preventable diet-related disease, should consistently be prioritised.

The use of FSANZ as a trojan horse by population health advocates in a joint meeting of FSANZ and the Food Ministers' Meeting, is exactly why the Australian spirits industry is concerned about the expansion of the 'public health' and safety focus to include non-food standards health and social objectives.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

No

Free text box, no character limit:

It would be fair to say that there was significant opposition and concern about FSANZ becoming the "guardian" of key food safety data.

In its submission the Victorian Government did not support Expanding FSANZ's Food Safety Role into Coordinating Food Safety Research, acting as a Guardian of Food Safety Databases and Collating and Creating Consumer-Facing Food Safety Education Materials, stating that: "FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient its focus to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

The NZFGC is cautious about positioning FSANZ to be the guardian of key food safety databases that includes New Zealand but is supportive for Australian food safety. It is unclear to what extent this would extend between the Australia and New Zealand as both countries maintain composition databases for example.

The Food Governance Node submission states that: "We do not support this expansion of FSANZ's role and responsibilities. FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas."

Industry Advisory Group for the New Zealand Food Safety Science and research Centre stated in its submission that "IAG is cautious about positioning FSANZ to be the guardian of key food safety databases." Even Wakatu Incorporation does not consider that FSANZ should be positioned as the guardian of data that relates to New Zealand.

Regional Public Health New Zealand does not support expanding FSANZ's food safety role to include coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials.

Spirits & Cocktails Australia and the Australian Distillers Association also oppose the specific application of this proposal to Australia only and any reforms to FSANZ that create anomalies or unnecessary differences between Australia and New Zealand.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

The Australian spirits industry believes it is important for FSANZ to focus on building strategic relationships with comparable international regulators both to share assessments or standards but also to work together with these international bodies to develop standards which are internationally relevant, particularly in our export markets.

Spirits & Cocktails Australia and the Australian Distillers Association is unsure why this needs to be addressed through the RIS and review process given FSANZ already has established working relationships with Health Canada and European Food Safety Authority (EFSA).

The support is conditional on this collaboration not being manipulated to import objectives, conditions, regulations, or other policy imposts from other jurisdictions that do not align with the current food safety standards priorities and objectives of FSANZ.

For example, the Red Meat Advisory Council (RMAC) cautions that this proposal must not lead to unintended (or intended) consequences that are

detrimental to industry and consumers: "However, in light of recent FSANZ partnerships with anti-meat and anti-farmer activist groups the Australian red meat and livestock industry is concerned with the effective decision making which may occur if delegated from a Ministerial level. Before any decision delegation, FSANZ needs to undertake a review into how partnerships with extremist activist groups were cultivated to ensure the agency's objectivity can be reinstated and confidence provided to industry and consumers."

We note that the Dieticians state in their submission that this should not result in automatic adoption of overseas assessments or regulations.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

No

Free text box, no character limit:

The Australian spirits industry remains concerned about attempts to redefine FSANZ's responsibilities away from its original intention of food safety to include both wide-ranging preventative health as well as regulating matters of farm and food sustainability.

We believe that there is significant risk that a Statement of Intent will be used to include a wide preventive health perspective, rather than the original intention of being related directly to providing public health benefits from a safe food regulatory system that protects human life through the provision of safe foods for consumption.

Spirits & Cocktails Australia and the Australian Distillers Association submit that there is already Overarching Strategic Statement for the food regulatory system.

The purpose of this document is to provide a strategic context for the Australian and New Zealand food regulatory system.

It states that the primary goal of the regulatory system is to protect the health and safety of consumers of food – in other words, to protect Australians and New Zealanders from preventable health risks associated with the consumption of food.

This means: helping to prevent people becoming sick or dying as the result of the consumption of unsafe food; and providing consumers with information so that they can choose appropriate food and remain healthy over time.

We see no urgent need or deficiencies in the current Overarching Strategic Statement that would warrant the duplication through the introduction of a new Statement of Intent. It is also unclear what the Courts would make of such a Statement.

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association agree that FSANZ should better use other regulatory instruments, such as guidelines or non-binding codes of practice, where such instruments would achieve the Authority's objectives.

We support FSANZ being able to recognise voluntary measures or codes of practice. Unlike legislative instruments, codes of practice should not be mandatory or enforceable, but can reflect an agreed approach that has the support or been adopted by the majority of industry including by market share. These codes can then serve as a demonstration of best practice by businesses to the market, but also give flexibility to small business to adopt these initiatives over time as they grow into more profitable entities.

These codes of practice should not be around the prevention of acute food borne illness, which require binding and mandatory instruments, but in areas like the provision of general, non-essential information to consumers, where the information may already be available on the majority of the products in market, and/or where consumers would otherwise have access to it, or know how to find it, in any case. FSANZ's adoption or creation of these codes of practice would signal their importance to stakeholders and give impetus to industry stakeholders to adopt them but allow flexibility for smaller businesses and new entrants to the market.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Not Answered

Free text box, no character limit:

Spirits and Cocktails Australia agrees that FSANZ should take into account the cultural considerations First Nations and Māori Peoples in the food standards process and that the development of appropriate guidelines following the review and amendments to the Act.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

No

Free text box, no character limit:

Spirits & Cocktails Australia and the Australian Distillers Association do not believe that FSANZ should have a stand-alone statutory role in relation to other issues such as food fraud and crime. We believe that the existing ACCC provisions adequately cover and there is insufficient evidence or rationale for food fraud and food crime being distinct from other fraud and crime currently covered by the legal systems of the Commonwealth, State, and Territory governments.

FSANZ can already make standards that could apply to food fraud and crime and any additional obligations and responsibilities on FSANZ for enforcement would divert focus and resources and potentially conflict and duplicate other existing legal oversights.

According to the RIS currently, jurisdictions undertake significant work to hone a risk-based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

The RIS highlights that FSANZ currently has the statutory remit to coordinate food recalls in Australia, but only at the request of States and Territories. Stronger collaborations between FSANZ and the jurisdictions (including New Zealand) will facilitate more timely identification of risks and enable swift responses to better protect the public and minimise reputational damage to industry.

The IA suggests that FSANZ could collaborate more regularly with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response. Currently, jurisdictions undertake significant work to hone a risk-based approach to regulation, based on their own perceptions of where the most pressing risks lie. FSANZ already shares intelligence with the jurisdictions to support this. To expand this collaboration, FSANZ could use its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise.

Spirits & Cocktails Australia and the Australian Distillers Association does not support FSANZ's remit to be expanded into the area of enforcement, either with specific enforcement functions for select food standards, or in the role as a single, binational regulator. We do not believe the draft RIS has demonstrated a problem with the current enforcement responsibility framework, either at the state and territory level, or the federal regulators, such as the ACCC, who enforce against deceptive and misleading claims by companies including on issues of food safety. We believe the proper role for FSANZ is to undertake more education for industry on how to adhere to new food standards through non-binding guidance notes or other advice, and that enforcement agencies could either contribute to these notes or use them as a basis for enforcement-related decisions.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been "relatively few amendments in that time". We also feel that the methodology is overly binary between the options of status quo option or significant

reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

There is significant evidence that consumers are shifting their spending toward products that demonstrate genuine ESG-related benefits.

The Australian native bushfood and botanicals industry is a significant and growing sector. In 2019-20, sales proceeds for this industry were estimated at \$152.5 million, and they are projected to grow to \$300 million by 2025.

Research by the University of Sydney has found that growing native bush foods could reverse environmental degradation and offer Australia better food security, according to new research, but concerns remain around commercial production.

There is an exciting opportunity for Australia's spirit industry to align indigenous culture and native products with ESG focussed products. Indigenous ingredients native to a particular location offer brands a distinctive and unique selling point.

Ultra-local botanicals have emerged as a signature for brands looking to be authentically rooted in a culture or geographic region. However, a number of brands are now working with local communities, too, in a bid to be more responsible in their sourcing practices.

Whether it's in limited-edition versions of global brands or niche, region-specific launches, using ingredients from a specific place can help brands to convey their brand story, or tap into and address larger consumer concerns such as sustainability, fair labour practices and the environment.

According to the NSW Government's NSW First Nations Business Sector a key barrier hindering growth and development of the native bushfoods and botanicals industry include unrealised opportunities to improve the marketing of native bushfoods, production methods and technologies; and the need to develop business models that can scale the industry in ways that sustain First Nations knowledge, culture, practices, and control .

Improved coordination would help the Australian spirits industry engage and collaborate with peak indigenous food advocacy bodies such as the First Nations Bushfood and Botanical Alliance Australia (FNBBAA).

The NSW First Nations Business Sector – A return to prosperity used the use of pearl oyster flesh as a key ingredient in a new type of gin as an example of a recent innovative applications of native botanicals.

The growing international demand for authenticity and premiumisation extends to tourism that can drive significant growth in demand for cultural and natural tourism. The potential growth in the promotion of indigenous produce in Australian spirits presents a significant opportunity to develop First Nations businesses.

The increased use of indigenous and native ingredients by the Australian spirits industry presents an important opportunity to promote and produce in a way that is culturally respectful, environmentally and economically sustainable and culturally authentic.

The Australian Trade and Investment Commission notes that indigenous foods thrive in our visitor economy, with a priority on developing unique and high-quality products, including Aboriginal and Torres Strait Islander experiences. Presenting native foods in unique ways, generates unique visitor experiences.

The Queensland Government has supported Beachtree Distilling Co to assess new production methodologies, source and screen raw materials, and develop a new range of products with native food ingredients. This will enable the company to process these products, scale up manufacturing and diversify their product offering.

The growth of the cultural and natural tourism industry presents an opportunity to grow a resilient workforce on Country. Jobs in this sector create more than just employment opportunities: they allow young people to locate themselves where they can remain connected to kin and culture, even as they transition from formal education to the labour market.

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have

been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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 Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

No

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

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:

The Australian spirits industry recognises the importance of up to date and fit-for-purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries. Spirits and Cocktails Australia agrees that the Act has been in place for over 30 years but we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”. We also feel that the methodology is overly binary between the options of status quo option or significant reform, and that the costs and impacts for industry and consumers of significant change have been adequately into account.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

The Australian spirits industry recognises the importance of up to date and fit for purpose Australian and New Zealand food safety standards. These standards are critical for the health and safety of the community, and for the confidence of the public in food and beverages industries.

In providing a submission regarding the Review of The Food Standards Australia New Zealand Act 1991 - Draft Impact Analysis 2024, Spirits & Cocktails Australia and the Australian Distillers Association firstly affirm support the overarching objective of the Review and the efforts to modernise and future-proof the food regulatory system.

While we agree that the Act has been in place for over 30 years, we do not agree with the Impact Analysis (IA) assessment that there have been “relatively few amendments in that time”.

For instance, the original National Food Authority Act 1991 was amended to become the current Food Safety Standards Australia New Zealand Act (FSANZ).

In Section 2.1.3 The FSANZ Act 1991, the IA lists out the multiple amendments to the Act, including the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015, the Food Standards Australia New Zealand Amendment Bill 2010, the Australia New Zealand Food Authority Amendment Bill 1999, and the Australia New Zealand Food Authority Amendment Bill (No. 2) 1997.

Throughout this time, the Australian Parliament in consultation with the community and industry, have on numerous occasions sought to improve and update the regulation of Australian and New Zealand food safety standards.

That is why Spirits & Cocktails Australia and the Australian Distillers Association support the current the review into the Food Standards Australia New Zealand (FSANZ) Act, and its Terms of Reference (ToR) which explicitly recognise the importance of the food industry to regional communities and the broader economies of Australia and New Zealand.

There are elements of the IA that warrant inclusion in FSANZ reforms, but other elements require such significant change, reflect missed opportunities, or present significant risks, that cannot be supported in their current form.

We support sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety. In particular, creating an agile system that is responsive to industry and consumer needs in an ever-innovative sector is crucial to protecting our enviable global reputation for food safety.

There are, however, clearly elements of the IA and some specific recommendations that represent an overreach as to the role, responsibility and functioning of a food safety authority such as FSANZ.

We submit that there are widespread and deep concerns amongst stakeholders about the drift and scope creep into non-core areas that should be removed and not included in the Act, namely the proposals that cover:

1. FSANZ expansion into population health.
2. Removal of Ministerial decision-making powers

We note that the IA has dropped the contentious proposal in the RIS for FSANZ responsibilities to expand into farm and food sustainability. This proposal is yet another example of scope creep and expansion into areas that would divert resources and distract focus from the core purpose and responsibilities of a safe food standards system.

The industry is concerned about some of the issues raised during the consultation process, including options considered in the RIS, as well as some of the recommendations that are being proposed in the IA. This is especially so with the sudden introduction of an industry-wide levy similar to the wine industry levy.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 15:14:15

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Lily Pratt

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Public Health Association Australia

Which sector do you represent?

Public Health

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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 Impact Analysis (IA) and hence, the methodology, does not account for the long-term health impacts of foods and beverages, leaving consumers unprotected and exposed to preventable diet-related diseases.

Additionally, the IA has provided minimal detail regarding the methodological process, inputs and assumptions underpinning problem identification and prioritisation.

Ultimately, the proposed methodology has not identified the key policy problem of the Act –the Act does not enable the food regulatory system to meet its primary objective of protecting public health, specifically long-term health and preventable diet-related diseases, and the provision of adequate information to enable consumers to make informed choices. This point has been raised consistently by public health and consumer groups during the FSANZ Act review process.

Although the IA policy problem 1 attempts to incorporate a definition of public health into the Act as a solution, this alone does not solve the actual policy problem of how FSANZ operations can and should address long-term health and preventable diet-related disease. To help address this, we propose that

a Public Health Test be incorporated into the Act (see component 2.1 'other initiatives').

Policy problem 2 also does not adequately address time and cost burdens to consumers and governments if FSANZ fails to undertake standard reviews and proposals in a timely manner.

The IA presents two possible solutions: Option 1, 'retain the status quo' with no changes to the Act or to FSANZ operations, and Option 2, 'modernise regulatory settings' by adopting the entire package of reforms. PHAA disagrees with this all-or-nothing approach, as many of the valid problems identified in Option 1 can be fixed without changing the Act or operational framework of FSANZ. We also note that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1 and do not require legislation to implement, however this is not considered in the IA.

Options 1 and 2 should therefore not be deemed two independent options. We recommend that the overlapping elements are incorporated under Option 1, and that the modelling and cost benefit analysis (CBA) reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The Act should include responsibility for food systems security and vulnerability to climate change and biodiversity loss (as well as other food shocks) via impact analysis. FSANZ has the opportunity to play an important role in safeguarding food safety, security and sustainability, as well as ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and Nationally Determined Contributions are fulfilled.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. To be current and fit-for-purpose, the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs that are required for continued and sustainable food security.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health (including food security and sustainability) when developing food regulatory measures.
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively prioritised piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

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):

Including a definition of public health and safety in Section 3 and 18 of the Act is appropriate. The Act itself should expressly include FSANZ's role in protection against both short and long-term risks to health, including diet-related disease and food sustainability, when developing food standards.

However, this amendment would only have limited effect if the reform does not also address how FSANZ implements this part of their role. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see component 2.1 'other initiatives').

We support the use of the definition in the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors food security and food sustainability.

PHAA recommends the Act be amended to include a definition of public health as per the Statement with the following amendment (in italics): "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, and the diet-related risk factors for them, as well as acute food safety, food security and sustainability concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for a decade, already requires FSANZ to consider long-term health. The inclusion of the definition simply clarifies the role of FSANZ for external stakeholders, but the inclusion itself would not materially impact FSANZ's approach.

The CBA considers the following a qualified cost to industry of this reform: "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade."

We do not agree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

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:

When they are developed, Ministerial Policy Guidelines go through processes which assess them against industry considerations (like those listed in s18(2)(a)-(d)). There is no need for FSANZ to undertake this exercise again when making its own determinations.

The Act should be amended to ensure that FSANZ decision-making aligns with Ministerial Policy Guidelines and other items which FSANZ must consider, listed in s18(2)(a)-(d), only be considered once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be communicated in a report, should clearly demonstrate how compliance has been achieved and outline the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are clearly set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidelines is given the same weight as the considerations in s18(2)(a)-(d)).

PHAA recommends that the Act is amended to ensure Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and any potential language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Including a definition of public health will not itself ensure that the short and long-term impacts on health and any diet-related risk factors are considered in food standards. There must also be a mechanism to achieve public health outcomes through food standards.

We recommend amendments be made to the Act to establish a set of considerations that FSANZ must apply when setting priorities and making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations for assessing public health benefits and risks when developing, reviewing, updating and adopting food standards.

PHAA supports the below Public Health Test as proposed by The George Institute for Global Health in their submission. However, PHAA would also recommend that the environmental effects from the food supply should be incorporated as well (in capitals).

The PUBLIC HEALTH TEST

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;
- c) THE ENVIRONMENTAL EFFECTS FROM THE FOOD SUPPLY.

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;
- h) PREVENT FURTHER EXPANSION OF ULTRA-PROCESSED FOODS THAT ARE RESOURCE INTENSIVE.

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering 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?

No

Free text box, no character limit:

Although there are both risks and opportunities to the introduction of a risk-based framework, the information provided in the IA is too limited for PHAA to provide a definitive answer on the proposed approach. For instance, the IA doesn't detail how the risk framework will be applied, who will make decisions and what appeal mechanisms there will be.

From the information that is provided, it appears that food industry/commercially driven decisions are consistently assessed as 'low risk' and public health decisions are assessed as 'high risk'. Meaning that commercial decisions can be made quickly and without public scrutiny, as they would not need to go through rigorous consultation. Meanwhile, public health related decisions that would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer.

We are concerned that this would widen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as the basis for a minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

PHAA recommends that the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see component 2.1 'other initiatives') should be the criterion. The risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on where the risk assessment will fit within the decision-making process; delegation for risk assessment decisions; communication and appeals mechanisms.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

No

Free text box, no character limit:

There is no surety that accepting risk assessments from international jurisdictions would ensure standards represent the best outcomes for public health and consumers. The IA states that the determinations of 'overseas bodies' could be adopted. We would support international food standards only where those standards meet the Public Health Test (see component 2.1 'other initiatives'), and where non-conflicted bodies, like the World Health Organization, are included.

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:

The IA also does not provide enough detail as to how "enabling FSANZ to automatically recognise" would work. For instance, the IA mentions that there would still need to be decision making processes regarding this, but then does not outline what those decision-making processes might be. We recommend that any harmonisation should be consulted on and should include consideration of the Public Health Test (see component 2.1 'other initiatives').

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:

The intention for the minimal check pathway appears to apply only to applications and not proposals. Furthermore, this risks further prioritising commercial decisions over public health impacts, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways could remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures. This risks further prioritising commercial decisions.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

If consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated using the Public Health Test (see component 2.1 'other initiatives'), then there are opportunities relating to new pathways. We also suggest statutory timeframes for proposals to ensure they are processed in a timely manner (see component 2.2 'other initiatives')

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We strongly encourage the Public Health Test to be used to assess risk. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays. However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Prefer not to respond / I don't know

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

The Public Health Test could be used to determine which reviews are undertaken and how they are prioritised.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (i.e. those that flow throughout the Food Standards Code and affects all relevant products) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

We also support the implementation of timelines for standard reviews. Ideally, a timeline of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual. PHAA recommends the Act be amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice, therefore no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

We do not support this. Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice are consistently ineffective, unenforced and a risk to public safety, health and confidence in the food system.

See:

Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

In their current form, the reform options presented in the IA will not result in more proposals being progressed, nor will they ensure that the proposals

are processed in a timelier manner. A practical option to address this issue would be to introduce statutory timeframes for proposals into the Act.

Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. Implementing a timeframe of three years for completing proposals will create an incentive and a more balanced approach to progressing these important reforms and allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making.

PHAA recommends the Act is amended to include a statutory timeframe for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the inclusion of additional skills. Regarding the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills, we note that for adequate representation, specific positions for both First Nations and Māori people should be created on the FSANZ Board.

We would also support the engagement of food systems sustainability expertise on the Board, so that sustainability can be appropriately and correctly considered in assessments.

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:

The current nomination process whereby public health organisations put forward a nominee ensures greater management of real/perceived conflicts of interest. An open market process might reduce the number of public health positions on the board, and reduce the quality of public health nominees, particularly given that there are no details as to what such a process would look like.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications create a pathway for large industry stakeholders to gain priority in the FSANZ process. Allowing expedited applications results in matters that are important to public health being de-prioritised, despite the main objective of the FSANZ Act stating its purpose is “to ensure a high standard of public health protection throughout Australia and New Zealand”. Removing expedited applications creates a more level playing field for all.

PHAA recommends the Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

An industry-wide levy would ensure reliable funding for FSANZ to carry out its necessary and important duties.

PHAA recommends the Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support the figure presented in the IA, that the levy applies to the top 5000 large food businesses.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees are not as financially sound as an industry-wide levy for resourcing FSANZ.

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:

We do not believe that it is within the FSANZ remit 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

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?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

We would support the use of the Public Health Test to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA.

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:

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA, 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:

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:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics, Australian Institute of Health and Welfare and the Australian Centre of Disease Control should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Data is critical in identifying priorities, the development of policy options and the evaluation of implementation. We recommend the development of 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 broader burden of disease.
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

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:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

It would be acceptable for FSANZ to share information with international partners as part of initial background research for standard development. This differs to the earlier question relating to automatic recognition of international standards, which we do not support. International experience can provide helpful insight, but recognising other jurisdiction's standards for the Australian and New Zealand context would be inappropriate.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. We recommend that FSANZ considers co-developing culturally tailored compliance guidelines with First Nations and Māori stakeholders to ensure the food regulatory system is inclusive of the diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

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:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

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:

The current approach appears to conclude that the benefit of Option 2 (modernized regulatory settings) supersedes Option 1 (status quo). However, this calculation doesn't consider that there are key reforms proposed in Option 2 that could apply equally under Option 1, nor is it calculated into the CBA that some of the reforms of Option 2 may not ultimately be implemented.

The costs and benefits to consumers and governments need to be more detailed and the assumptions clearly articulated. We strongly suggest that the CBA include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals, and costs and benefits to consumers from standards reviews)
- these are not equal and should not be treated in the same way.
- The CBA should clearly state what is meant by 'public health benefits.' Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the CBA, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

PHAA recommends the Cost Benefit Analysis appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

It would be unreasonable for the CBA to equivocate delayed profits for industry to health system costs borne by governments and consumers. The CBA in the IA, however, notes that there are delay costs to industry due to the inefficient processing of both applications and proposals. Yet, there are no details provided to substantiate that assumption, nor are examples provided. Additionally, the data that is presented in the IA is not independent or verifiable.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

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:

Please see response to "Section 6 – Net Benefit (Option 1) "Are there other costs and benefits that have not yet been qualified or quantified?" Also, the CBA should clearly articulate how a 'risk-based' approach improves public health.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits. We do not agree that this conclusion can be drawn from the data or proposed reforms presented.

The CBA states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the CBA and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the CBA of the proportion of increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

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

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The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is possible that not all components of Option 2 will be introduced, and some of the proposed changes could be made equally in Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) does not have application for Option 1, because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution in favour of Option 2. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 can already be made available by FSANZ under Option 1 and should therefore not receive a positive rating where they are considered for Option 2.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

As stated in the previous response, the methodological approach taken has some key issues that have subsequent flow on effect to the assigned ratings of sub-problems.

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 IA has thematically grouped the reform components, however, to better assess the risks within each component, we recommend that each component is assessed separately, particularly as it is uncertain that all components will be implemented. It is imperative that the risks of each component are clear so that the combined impact of components that are implemented can be accurately assessed. Similarly, uncertainty around the public health objective and management of risks related to long-term health/food security/sustainability should be considered as separate risks and not grouped together. Additionally, the risk-framework and new pathways have potential to impact short-term health outcomes and long-term health outcomes. This must be specified and the risk for each assessed separately.

The lack of requirement to properly resource FSANZ to complete proposals and reviews must also be considered a risk. However, the current method has not been factored in as a risk itself, nor into the assessment of related risks. Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2, yet many of the risks identified under Option 1 can be addressed without legislation under the status quo. It also does not consider that the reform components in Option 2 may not all proceed, nor does it consider that the components may not resolve the risk. Due to this bias in the methodology, risk ratings cannot be appropriately assigned as they have not yet been properly assessed.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Inclusion of sustainability in the Act

To achieve FSANZ's purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5-3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability.

New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

The IA does not highlight FSANZ's role in improving and shaping the food supply. Although FSANZ is only one mechanism within the food regulatory system for this, the potential impact of FSANZ making full impact assessments that adequately explore public health effects, and its ability to shape product formulation and labelling, has a scale of impact on diet-related diseases that most other mechanisms do not.

This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. From the information provided in the IA, we do not believe that Option 2 will enable FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to 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:



Public Health Association
AUSTRALIA

Public Health Association of Australia submission on the Review of the Food Standards Australia New Zealand Act Draft Impact Analysis

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10 April 2024

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Public Health Association
AUSTRALIA

The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens, but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

Our mission is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society, underpinned by a well-functioning ecosystem and a healthy environment.

Traditional custodians - we acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

Introduction

PHAA welcomes the opportunity to provide input to the Review of the Food Standards Australia New Zealand (FSANZ) Act Draft Impact Analysis (IA).

This review of the FSANZ Act is a vital opportunity to strengthen the food regulation system to ensure that it promotes and safeguards public health. A strengthened FSANZ would not only assess the acute health impacts from consuming food and beverages but would also assess the health impacts from consuming particular foods and beverages over a longer period of time that may give rise to future chronic illnesses.

The contribution of our food system to chronic conditions and long-term population health is important but under-recognised in the current Act. The recently released IA shows that assessment of long term health impacts from food and beverages (diet-related diseases) are not being considered in FSANZ's decision making process. There are no proposed reforms that will improve how the system and FSANZ deals with long-term public health impacts, despite this being the key public health recommendation from PHAA and other public health groups in prior consultations.

Additionally, reform options have been presented in the IA that will likely reduce transparency and independent oversight rather than guarantee a well-funded, independent and transparent FSANZ.

We urge this review to recommend strengthening the FSANZ Act to ensure this situation is rectified. In this submission, we offer solutions to improve how the FSANZ Act enacts assessment of the long-term health impacts of the food regulation system.

The PHAA appreciates the opportunity to make this submission. We recommend the following actions are taken:

- A definition of public health be included in the Act as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.
- Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).
- Development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.
- Include statutory timeframes for standard reviews (3 years).
- Include statutory timeframes for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.
- Remove the expedited applications process.
- Implement an industry wide levy.
- The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

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Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability¹ and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. To be current and fit-for-purpose, the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs that are required for continued and sustainable food security.

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?

The sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health (including food security and sustainability) when developing food regulatory measures.
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively prioritised piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),

As is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and sustainability and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Section 5 - Options for reform: 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

Including a definition of public health and safety in Section 3 and 18 of the Act is appropriate. The Act itself should expressly include FSANZ's role in protection against both short and long-term risks to health, including diet-related disease and food sustainability, when developing food standards.

¹ James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892

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Compliance with Ministerial Policy Guidelines should be communicated in a report, should clearly demonstrate how compliance has been achieved and outline the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are clearly set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidelines is given the same weight as the considerations in s18(2)(a)-(d)).

PHAA recommends that the Act is amended to ensure Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Section 5 - Options for reform: Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Don't know.

We are supportive of greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and any potential language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

Section 5 - Options for reform: Component 2.1 overall

Are there other initiatives that should be considered in Component 2.1?

Yes

Including a definition of public health will not itself ensure that the short and long-term impacts on health and any diet-related risk factors are considered in food standards. There must also be a mechanism to achieve public health outcomes through food standards.

We recommend amendments be made to the Act to establish a set of considerations that FSANZ must apply when setting priorities and making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations for assessing public health benefits and risks when developing, reviewing, updating and adopting food standards.

PHAA supports the below Public Health Test as proposed by The George Institute for Global Health in their submission. However, PHAA would also recommend that the environmental effects from the food supply should be incorporated as well (in italics).

The PUBLIC HEALTH TEST

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;
- c) *The environmental effects from the food supply.*

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;



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This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

PHAA recommends that the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

The Public Health Test (see component 2.1 'other initiatives') should be the criterion. The risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on where the risk assessment will fit within the decision-making process; delegation for risk assessment decisions; communication and appeals mechanisms.

Section 5 - Options for reform: 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

There is no surety that accepting risk assessments from international jurisdictions would ensure standards represent the best outcomes for public health and consumers. The IA states that the determinations of 'overseas bodies' could be adopted. We would support international food standards only where those standards meet the Public Health Test (see component 2.1 'other initiatives'), and where non-conflicted bodies, like the World Health Organization, are included.

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

The IA also does not provide enough detail as to how "enabling FSANZ to automatically recognise" would work. For instance, the IA mentions that there would still need to be decision making processes regarding this, but then does not outline what those decision-making processes might be. We recommend that any harmonisation should be consulted on and should include consideration of the Public Health Test (see component 2.1 'other initiatives').

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

The intention for the minimal check pathway appears to apply only to applications and not proposals. Furthermore, this risks further prioritising commercial decisions over public health impacts, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

New pathways could remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding



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We also support the implementation of timelines for standard reviews. Ideally, a timeline of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual.

PHAA recommends the Act be amended to include statutory timeframes for standard reviews (3 years).

Section 5 - Options for reform: 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

FSANZ can already develop guidelines and Codes of Practice, therefore no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice.

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

We do not support this. Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice are consistently ineffective, unenforced and a risk to public safety, health and confidence in the food system.

See:

Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Section 5 - Options for reform: Component 2.2 overall

Are there other initiatives that should be considered in Component

Yes

Timeframes for proposals.

In their current form, the reform options presented in the IA will not result in more proposals being progressed, nor will they ensure that the proposals are processed in a timelier manner. A practical option to address this issue would be to introduce statutory timeframes for proposals into the Act.

Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. Implementing a timeframe of three years for completing proposals will create an incentive and a more balanced approach to progressing these important reforms and allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making.

PHAA recommends the Act is amended to include a statutory timeframe for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual.

Section 5 - Options for reform: Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

We support the inclusion of additional skills. Regarding the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills, we note that for adequate representation, specific positions for both First Nations and Māori people should be created on the FSANZ Board.

We would also support the engagement of food systems sustainability expertise on the Board, so that sustainability can be appropriately and correctly considered in assessments.

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

The current nomination process whereby public health organisations put forward a nominee ensures greater management of real/perceived conflicts of interest. An open market process might reduce the number of public health positions on the board, and reduce the quality of public health nominees, particularly given that there are no details as to what such a process would look like.

Section 5 - Options for reform: Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Expedited applications create a pathway for large industry stakeholders to gain priority in the FSANZ process. Allowing expedited applications results in matters that are important to public health being de-prioritised, despite the main objective of the FSANZ Act stating its purpose is “to ensure a high standard of public health protection throughout Australia and New Zealand”. Removing expedited applications creates a more level playing field for all.

PHAA recommends the Act is amended to remove the expedited applications process.

Section 5 - Options for reform: Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

An industry-wide levy would ensure reliable funding for FSANZ to carry out its necessary and important duties.

PHAA recommends the Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

We support the figure presented in the IA, that the levy applies to the top 5000 large food businesses.

What would be the expected impact of compulsory fees for all applications?

Negative

Compulsory fees are not as financially sound as an industry-wide levy for resourcing FSANZ.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

No

We do not believe that it is within the FSANZ remit to assist with entrepreneurial activities.

Section 5 - Options for reform: 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?

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA.

What factors should be considered as part of the joint prioritisation matrix?

We would support the use of the Public Health Test to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

Section 5 - Options for reform: 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

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA, and any enhancement of them is available under both options.

Section 5 - Options for reform: 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

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics, Australian Institute of Health and Welfare and the Australian Centre of Disease Control should be ensured.

What types of data would be most useful for FSANZ to curate?

Data is critical in identifying priorities, the development of policy options and the evaluation of implementation. We recommend the development of 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 broader burden of disease.
- Food security data

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- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Section 5 - Options for reform: Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

What should be the focus of such information sharing arrangements?

It would be acceptable for FSANZ to share information with international partners as part of initial background research development. This differs to the earlier question relating to automatic recognition of international standards, which we do not support. International experience can provide helpful insight, but recognising other jurisdiction's standards for the Australian and New Zealand context is inappropriate.

Section 5 - Options for reform: Component 2.4.6

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

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. We recommend that FSANZ considers co-developing culturally tailored compliance guidelines with First Nations and Māori stakeholders to ensure the food regulatory system is inclusive of the diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

Section 5 - Options for reform: Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Section 6 – Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

The current approach appears to conclude that the benefit of Option 2 (modernized regulatory settings) supersedes Option 1 (status quo). However, this calculation doesn't consider that there are key reforms proposed in Option 2 that could apply equally under Option 1, nor is it calculated into the CBA that some of the reforms of Option 2 may not ultimately be implemented.

The costs and benefits to consumers and governments need to be more detailed and the assumptions clearly articulated. We strongly suggest that the CBA include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals, and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.



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- The CBA should clearly state what is meant by 'public health benefits.' Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the CBA, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

PHAA recommends the Cost Benefit Analysis appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the current delay costs to industry?

It would be unreasonable for the CBA to equivocate delayed profits for industry to health system costs borne by governments and consumers. The CBA in the IA, however, notes that there are delay costs to industry due to the inefficient processing of both applications and proposals. Yet, there are no details provided to substantiate that assumption, nor are examples provided. Additionally, the data that is presented in the IA is not independent or verifiable.

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

Please see response to "Section 6 – Net Benefit (Option 1) *Are there other costs and benefits that have not yet been qualified or quantified?*" Also, the CBA should clearly articulate how a 'risk-based' approach improves public health.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits. We do not agree that this conclusion can be drawn from the data or proposed reforms presented.

The CBA states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the CBA and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the CBA of the proportion of increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

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

The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is possible that not all components of Option 2 will be introduced, and some of the proposed changes could be made equally in Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) does not have application for Option 1, because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution in favour of Option 2. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.
- Many of the reforms suggested under Option 2 can already be made available by FSANZ under Option 1 and should therefore not receive a positive rating where they are considered for Option 2.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

As stated in the previous response, the methodological approach taken has some key issues that have subsequent flow on effect to the assigned ratings of sub-problems.

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

The IA has thematically grouped the reform components, however, to better assess the risks within each component, we recommend that each component is assessed separately, particularly as it is uncertain that all components will be implemented. It is imperative that the risks of each component are clear so that the combined impact of components that are implemented can be accurately assessed. Similarly, uncertainty around the public health objective and management of risks related to long-term health/food security/sustainability should be considered as separate risks and not grouped together. Additionally, the risk-framework and new pathways have potential to impact short-term health outcomes and long-term health outcomes. This must be specified and the risk for each assessed separately.

The lack of requirement to properly resource FSANZ to complete proposals and reviews must also be considered a risk. However, the current method has not been factored in as a risk itself, nor into the assessment of related risks. Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

The IA summarises that Option 1 was deemed on average much riskier than Option 2, yet many of the risks identified under Option 1 can be addressed without legislation under the status quo. It also does not consider that the reform components in Option 2 may not all proceed, nor does it consider that the

components may not resolve the risk. Due to this bias in the methodology, risk ratings cannot be appropriately assigned as they have not yet been properly assessed.

Section 9 – Evaluation of the preferred option

Is there anything else you want to share with us on the Impact Analysis?

Yes

Inclusion of sustainability in the Act

To achieve FSANZ's purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action [COP28 Declaration on Food and Agriculture](#)).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. The release of the National Health and Climate Strategy clearly demonstrates the Commonwealth Government's commitment to address food security in the face of climate change (See Actions 3.1, 3.3, 3.5-3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability.

New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

The IA does not highlight FSANZ's role in improving and shaping the food supply. Although FSANZ is only one mechanism within the food regulatory system for this, the potential impact of FSANZ making full impact assessments that adequately explore public health effects, and its ability to shape product formulation and labelling, has a scale of impact on diet-related diseases that most other mechanisms do not.

This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. From the information provided in the IA, we do not believe that Option 2 will enable FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.



Conclusion

The PHAA appreciates the opportunity to make this submission. We recommend the following actions are taken:

- A definition of public health be included in the Act as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.
- Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).
- Development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.
- Include statutory timeframes for standard reviews (3 years).
- Include statutory timeframes for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.
- Remove the expedited applications process.
- Implement an industry wide levy.
- The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.



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10/04/2024



Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 15:54:38

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Food Frontier Institute

Which sector do you represent?

Other (please specify)

Other: :
Not for profit think tank

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::
[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:

- a. The current methodology does a thorough evaluation of risk-based versus rules-based approach to standard setting.
 - i. More evaluation of self-substantiation versus pre market entry could have been considered, gaining a better understanding of why health stakeholders were concerned about this approach, what might address their concerns, and an examination of other highly regarded jurisdictions where self-substantiation is performing well, and a range of settings that it might be appropriate for, and where it would not be appropriate. And how effective is self-substantiation in other jurisdictions in ensuring food safety and improving efficiency of the system for stakeholders.
 - ii. For novel foods, where there is actual or a perception of higher risk, a rules-based approach is required. However, where novel foods are approved in another highly regarded jurisdiction, mutual recognition and harmonization of regulatory evaluation should be an option, but not compulsory, allowing a risk-based approach in this setting as well.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

The methodology might also consider opportunity cost to the ANZ public in not having the newest technology or products available due to high cost and timelines in ANZ compared to countries with well-regarded regulatory systems and higher populations. For example, in the case of cellular agriculture, specifically cultivated meat and precision fermentation dairy and fats, other well-regarded jurisdictions have approved and are assessing multiple new novel food products. Australian companies are choosing to go elsewhere first due to larger market opportunities than the relative smaller population of Australia. Having a rules-based standard setting approach to novel foods for the initial risk assessment is important. However, when another highly regarded standard setting agency has already assessed a product, a risk-based approach for accepting certain data and findings should be a pathway in the legislation. This would likely bring more investment and innovation to ANZ. The methodology should quantify the potential for this approach by developing a novel food index that measures the number of submissions for these novel foods in other highly regarded jurisdictions, giving some indication of the relative attractiveness of the ANZ standard setter versus the rest of the world. The table below indicates approvals for cultivated meat products globally and gives an indication of submissions but not actual numbers. It was indicated to Food Frontier in H2 2023 that in the US, there were 30 applications for cellular agricultural product evaluation. GFI analysis of cultivated meat regulatory framework in 2023 showed that there are many applications underway in the US and Singapore, and only one in Australia (https://www.linkedin.com/posts/elliott-swartz-19933420_heres-my-summary-of-where-cultivated-meat-activity-7181440384697294851--3gz?utm_source=share&utm_medium=organic)

b. Anticipating new business models, for novel foods.

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:

3.1.8 Sub problem 4, FSANZ generally defaults to developing food standards, but other regulatory measures could be more efficient to create. rated 4, could be rated higher. The development and use of regulatory measures like guidelines and codes of practice can reduce cost and improve efficiency for food companies, recognizing that not all issues require the time/resources/rigour to develop a new or change a standard.

3.1.9 Sub problem 2, long term decreases in funding has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions. Although his problem is examined under the efficiency lens, and a more comprehensive review of the substantive funding arrangements of FSANZ is outside the scope of this review, the IA does make recommendations on a funding model going forward including a \$2000 levy to the 5000 largest food companies in Australia. A higher impact rating might trigger more comprehensive review for the long-term funding of FSANZ, recognizing that comparable international food standard setting bodies are more adequately resourced than FSANZ on a per capita basis (Canada \$1.31 per person, England \$3.60 per person, versus \$0.70 and \$0.30 in Australia and New Zealand respectively.) A higher level of Government investment is required to allow FSANZ to improve its output and deliver value to its stakeholders.

3.1.10 Sub problem 2, Limited intelligence sharing between stakeholders across the regulatory system is resulting in duplication of effort and missed opportunities to manage risk. Rated 4. Although FSANZ has extensive professional relationships with agencies involved in food policy, regulation and research, there is a real opportunity for FSANZ to improve its own knowledge of and share with stakeholders consumer preferences and expectations on food safety and risk. By enhancing intelligence sharing between stakeholders across the regulatory system, government and industry, knowledge will be improved and shared more efficiently. ANZ will also be seen as a more business friendly, less complex jurisdiction for food safety and standard setting.

Sub problem 3, Inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies, while potentially undermining management of foodborne risks (Australia only). Rated 6. The lack of a national Food Safety program and different reporting requirements between jurisdictions means that food companies need to adhere to different requirements in each state for food safety. While foodborne risk should be the major focus, it has been reported to Food Frontier that a lack of enforcement of food standards, particularly for imported foodstuffs, has disadvantaged local food manufacturers who are complaint with the standards, versus imported foods and ingredients with low surveillance requirements allowing foods that might not be dangerous but are of a lower standard, and often significantly cheaper to be sold.

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):

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?

Yes

Additional comments (optional):

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

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:

Food Frontier supports the options set out in the IA for requiring thorough explanation of how ministerial guidelines have been applied/considered.

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:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

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:

Food Frontier welcomes in principle a risk-based framework approach to certain food regulatory measures. Risk-based standard setting can ensure the protection of public health and health outcomes, support more effective processes to reduce the overall cost for the standard setter, freeing it up to more fully execute its other duties, and provide a more cost-effective option to food companies, encouraging investment in improving the quality of foods available for sale in ANZ.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

Existing evidence of approval and safe use in other highly regarded jurisdictions should be a key determinant of the risk framework. Food Frontier supports that regulatory harmonization and mutual recognition can be used, but not mandated/applied, to demonstrate safety. FSANZ should retain the right to not automatically apply international standards for clearly set out reasons, including particular ANZ dietary patterns. Other criteria like alignment with ANZ FMM and other bodies strategic priorities, particular subject matter expertise, factors that might affect the extent of risk or scope of the impact, existing evidence, should be included.

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 potential impact of this approach could be measured and qualified through industry surveys to indicate the value to ANZ consumers through the introduction of the newest improvements to existing products that have been assessed and launched in other jurisdictions but not in ANZ due to the onerous requirements to vary the Code. Data could be collected from food manufacturers for both novel and food products of longstanding use, improved ingredients, additives and fortifications, household cleaning products and other consumer products where improvements requiring a minor variation or of the code is required for sale of products in ANZ.

In the case of one plant-based meat company planning to come to market in 2020 with a product that contained a new additive, it faced a wait of between six months to two years for the application process to be determined. The additive in question has already been through the U.S. GRAS/ food additive process, yet still had to undergo the full assessment by FSANZ. In this case, the company felt there was no choice but to pay the expedited processing fees, which were in the range of \$150,000 AUD. For a company that would benefit from an exclusive, capturable commercial benefit (ECCB), which will often be the case for companies using new ingredients, the paying of processing fees is not currently optional, and in fact, the expedited pathway is not afforded, in spite of paying the ECCB fee. A risk-based framework in this situation may cost-effectively bring a new food choices to ANZ consumers more quickly with less cost to the applicant.

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:

Food Frontier supports FSANZ accepting risk assessments from international jurisdictions to exercise risk-based on proportionate handling of applications and proposals.

FSANZ already has some data sharing arrangements in place with highly regarded international regulatory agencies and international bodies. Currently FSANZ can consider international risk assessments that already exist, for example Codex, but cannot formally adopt these for the purposes of its review. Were FSANZ allowed to adopt risk assessments from international highly regarded agencies and bodies, it would reduce duplication of effort, and simplify processes for applicants without increasing risk.

For example, vegetarian, vegan and plant-based meat products in international markets are often fortified with vitamins and minerals, commonly calcium, vitamin A, D, B group. In the US, fortification of plant-based meat chicken nuggets with vitamin B5 is allowed, but not allowed under the code for meat analogues in Australia. A risk-based approach, ensuring that Australian dietary consumption habits are considered, could allow new products considered safe in other highly regarded jurisdictions, to be sold in Australia and New Zealand, offering consumers more choice of foods, and less complexity for importers. The same could be used for flavorings and extracts . Many of these products have a long history of use and safety.

Were this risk-based approach to be implemented by FSANZ, it would encourage food manufacturers to import foods to Australia, and offer consumers more choice.

Cellular agriculture, an emerging novel food and ingredient category of foods, that offers great opportunities for new foods to be produced that have benefits including improved sustainability over comparable existing products. As mentioned in the new methodologies section, it should be considered that Australia and New Zealand might be missing out on investment and innovation for foods and ingredients made using these technologies. A new pathway to amend food standards, where risk assessments are available that were accepted by highly regarded international standard setters and regulators, using a risk-based approach, should allow them to be accepted by FSANZ in ANZ. This would likely improve the number of new and novel food products being offered to consumers, and increase investment by businesses in ANZ. Making an application to change the Code in Australia and New Zealand is a significant investment in time and money and based on potential market size, some companies, even Australian based ones, are making a trade off and only applying for approval in larger markets like US, or entry points to Asia like Singapore.

Steps like an annual review of harmonization data and risk data of international standards would identify new or unforeseen risks as they emerge that might need to be considered.

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:

Yes, for the reasons listed above, to ensure ANZ remains competitive as a target market for new food innovation, and to reduce duplication of regulatory assessment cost and resources by multiple global regulators. As mentioned in the IA, The Industry Innovation and Competitiveness Agenda: An Action Plan for a Stronger Australia supports this approach.

FSANZ should also seek to have mutual recognition, using FSANZ generated risk assessments to be used in other jurisdictions, encouraging ANZ based companies to do the core work here and not overseas, ensure FSANZ retains its capability and status as a world class regulator.

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:

Food Frontier's earlier example of fortification of food that is approved in another highly regarded jurisdiction may apply here.

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:

Food Frontier supports the proposed pathways to amend food regulatory measures in figure 9, with applications and proposals using enhanced existing pathways, the new pathway of automatic adoption, and a minimal check pathway.

Although the IA specifies that further work is required to agree exactly what the pathways might look like, risk-based and proportionate handling of applications and proposals will improve efficiency of the systems and reduce complexity to industry.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Improved efficiency of FSANZ, reduced complexity to industry, and consumers will benefit through more and better foods being available.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

Codes of practice and guidelines could be used to compliment food standards.

Improved products might come to the market in ANZ, where a minor improvement or reformation that would result in the need for a minor amendment to the code, might not have been rolled out to ANZ consumers, might now be included in a global product upgrade.

Making it easier to bring new products to the market will encourage competition, ultimately benefiting the consumer.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

Novelty, more caution should be exercised in more novel or disruptive technologies

Likelihood and magnitude

Compliance / penalties

Consumer acceptance

Public good

Sustainability

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

Food Frontier is a not for profit think tank focused on accelerating the uptake of alternative proteins through research, reports, events, government relations and industry connections in the Australian and New Zealand region. It supports legislative change that safely brings improved outcomes; less cost and complexity, and faster time to the market, for businesses working in the alternative proteins space. Investment certainty will be improved, and a clearer less complex regulatory pathway will improve new product development, benefitting consumers with better tasting, more nutritious products. Currently there is a number of plant based and cellular agriculture products that are sold around the world that are not available to ANZ consumers because the market is not attractive enough to warrant the investment to achieve regulatory approval here. For example, Vivera is a brand of plant-based meat products sold in Europe with more than 30 stockkeeping units (SKU's). In Australia it only sells 4 SKUs due to discrepancies in minor ingredients that are not approved as additives by FSANZ. The size of the market in Australia does not warrant an application to vary the Code to allow the European recipe

to be sold here, so the company chose only to sell the 4 SKUs that could easily be reformulated to meet the standard, or already complied. Consumers are missing out on access to these products that are considered safe in a high standard region.

Most cellular Ag products fall under the major variation for novel foods. The current rules-based system requires the applicant to produce safety and environmental data to support its safety, requiring significant resources and capability. There is currently only one product being considered in Australia versus many more in international jurisdictions. Streamlining decision making to provide a pathway that allows risk assessments from highly regarded international standard setting agencies like Canada, US, UK and Singapore to be adopted, would allow safe and cost-effective regulatory approval here for international companies, giving ANC consumer more access to these technologies, and growing the uptake of alternative proteins produced using novel technologies.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Food Frontier supports streamlining decisions and delegations but also respects that the multiple agencies involved need to be accountable to their key stakeholders including FSANZ, FMM, FRSC. Clear guidelines on purpose, process, and communication should be exercised with a clear understanding of each stakeholder expertise area. Activities like joint agenda setting and early engagement could help streamline objectives and outcomes.

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?

Yes

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

More timely holistic reviews would allow FSANZ to respond to changing consumer habits, emerging technology and global trends.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

More holistic consideration of food standards could include reviews to encourage attracting food businesses to invest sustainability of food production, better for you nutritional products, foods that address public health issues like obesity, or alternative proteins for improving protein diversity in the market.

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:

In addition to FSANZ efficiency, this would also make it faster and less complex to bring applicable new food products to the market, encouraging competition and benefiting consumers.

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:

Food safety risk management is well established for food manufacturing through certification systems like HACCP, GMP.

A minor variation of the code to allow an approved additive to an allowable food, that was already present in the combined form a highly regarded jurisdiction could be managed safely and efficiently through a Code of Practice.

A guideline could have been used to more easily understand the requirements of the code for foods containing a different form of protein from leaves, rubisco. This may have saved time and reduced complexity which was found to be allowable after an expensive consultant was required to navigate the complexity of the Code.

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:

IA - Figure 9, Proposed pathways to amend food regulatory measures, a minimal check situation, where risk is low, and there are approved standards developed in comparable regulatory systems, are suitable for the use of Code of Practice or guideline by applicants.

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 many examples of successful Codes of Practice and guidelines developed for industry by industry by industry associations and professional bodies.

More applications via this channel for low risk changes to the Code, due to less cost, time and complexity for the application, increasing competition and providing more choice to consumers of safe food. More efficient use of FSANZ resources.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Negative

Free text box, no character limit:

A more timely and efficient timeframe for considering all applications may negate the need for an expedited pathway, however this option should remain, allowing industry to apply its individual commercial imperative and chose a more costly but faster statutory timeframe should it be warranted for the particular application.

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:

It is clear the FSANZ is under resourced and needs to increase its funding base to deliver standard setting services to the Australian and New Zealand people. FSANZ is significantly underfunded on a per capita basis compared to other jurisdictions at \$0.70 and \$0.30 for Australia and New Zealand respectively per person per year, versus \$1.31 per person, per year, increasing to \$3.60 per person in England; \$7.00 per person per year in Ireland; and \$7.76 per person, per year in Scotland according to the IA. It is clear that the Australian and New Zealand Government annual contributions should be higher.

The IA surfaced that this might be through a combination of greater direct funding from Federal and New Zealand Governments, cost recovery from the states for food recall coordination or other enforcement activities, and through industry levies.

The principle of user pays is well established but it needs to be affordable and equitable. Australian industry collectively raises about \$11 billion per year from 248 levies (<https://www.pc.gov.au/research/completed/industry-levies/industry-levies.docx>). The Productivity Commission calls levies the long tail of the Australian tax system and suggests they raise less than 2% of total taxation and are expensive and inefficient to collect. Regulatory cost recovery levies are included in these figures. The Productivity Commission found that consolidation of levy collection agencies could be a sensible and cost-effective way to collect levies .

The IA recommended that for example, a \$10 million industry contribution, raised through \$2,000 levy on the largest 5000 Australian food business could be implemented. No information was provided about the shape of the 5000 businesses, or their ability to pay.

Some newer industries, like alternative proteins, generate little or no revenues yet, and potentially absorb significant amounts of resources generating novel food risk assessments, and might be perceived to absorb more of the resources of FSANZ than more mature industries.

While an industry wide levy on food companies may be an option it requires considerable further analysis and consultation with industry to ensure that it is equitable, affordable and could be efficiently collected at the correct level of industry (raw material, manufacturing, retail and food service level, imported food etc.).

More consultation and analysis needs to be done before a levy-based cost recovery system to part fund FSANZ is imposed on industry.

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:

As discussed above, considerably more consultation and analysis needs to be done to answer this. A levy would need to capture all products covered by the code, domestic and imported. More work needs to be considered as to how it could be feasibly collected, again, further engagement with stakeholders should be conducted, and analysis on the shape of the 5000 largest food companies provided from the IA consultants.

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:

It is not possible to say an amount per organization without further information. All options for funding FSANZ, including a larger contribution from government, flat annual levy, turnover based funding.

What would be the expected impact of compulsory fees for all applications?

Not Answered

Free text box, no character limit:

More information about the amount per application and expected revenue generation resulting, and the improvement in timeframe this would offer needs to be provided. Where a fee served as a deterrent to upgrade an existing approved food product to a higher standard in ANZ, or apply for a minor amendment for an already approved product in another jurisdiction to make it available in ANZ, the public good would not be served by an fee per application-based system.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Yes

Free text box, no character limit:

It was also surfaced in the IA that FSANZ could carry out entrepreneurial activities to generate revenue. Many food companies, especially small companies, currently pay for consultancy services to navigate how to meet the requirements to amend the Code, so, based on FSANZ expertise in this area, its services might offer food companies more choices for these services. In addition, FSANZ could make available insights and data from its consumer health databases, generating revenue and improving knowledge.

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?

Yes

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Positive

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

These databases are currently housed disparately. This is an opportunity to use data and insights to identify problems trends early, or as indicators for issues arising. The public good would be served by a single custodian with a clear mandate to share intelligence and insights with other agencies.

As mentioned, it should also be investigated whether insights and data could be monetised (ethically) to be available to industry.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Dietary patterns habits and changes, health indicators, nutritional data, consumer opinion and behaviour, surveillance data, allergen and foodborne illness, recall efficiency and occurrence.

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:

Yes, as outlined in previous comments.

It should not be compulsory to accept this data however as each risk should also be considered in the Australian and New Zealand context.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

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:

Levies already being paid by the food industry

The shape of the proposed \$2,000 levy by the largest 5000 food companies

Expected growth in the number of applications expected by FSANZ

Over investing in a new industry to attract innovation and investment to ANZ for better and newer food products to be available, eg alternative proteins, to attract applications to Australia from companies developing cellular agriculture in other well regarded jurisdictions.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

There are current delays for unpaid applications waiting for capacity to assess their applications.

There are delays where ECCB fees have been paid but the application is still considered unpaid and not subject to being expedited.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Yes

Free text box, no character limit:

The current regulatory settings are delivering a safe food system to Australiana and New Zealand consumers - the system is not broken, but it could operate more efficiently.

Consumers have high levels of trust in food in Australia and New Zealand.

An additional benefit that might be considered in characterizing the regulatory settings is Australian and New Zealand food is highly regarded in Asian and other export markets. It is considered safe and high quality. Food Frontier's 2023 Proteins and Asia report

(<https://www.foodfrontier.org/resource/alternative-proteins-and-asia/>) found that consumers' perceptions of provenance for Australian and New Zealand food products were high, and were considered trustworthy, natural and high quality, compared to many other competitor products .

The benefits of making the system accessible through cost and resource requirement efficiency of risk-based approach to encourage industry to develop products locally, and bring improved products from overseas to Australia and New Zealand, should be considered.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

Market attractiveness for minor and major innovation for food should be undertaken to measure the benefit to ANZ consumers to evaluate the impact of product improvements and new novel food products approved in other well-regarded jurisdiction being introduced in ANZ, that are currently not.

Attracting industry, especially Australian companies to make their initial novel food regulatory application to FSANZ could enhance FSANZ capability and reputations as a world class regulator.

Sustainability information on food products could offer benefits of changing dietary consumption habits and could encourage industry to innovate and develop new products that perform better for this metric.

A limited definition would allow FSANZ to confirm and regulate sustainability claims, potentially through already operating systems such as carbon-neutral offset programs. The environmental impacts of food production would need to be defined with set terms and measurements, which the industry has input in to and is able to agree upon.

Although potentially out of scope, carbon labelling schemes on food packets, such as those used by British alternative protein company Quorn may be a good reference point to understand how this has been implemented by some food brands already.

A broad definition of sustainability, such as one encompassing the suggested factors, is nebulous and risks scope creep. A broad definition potentially attempts to address structural and systemic issues such as social and economic health - which although important - are beyond the remit of a food regulator. A broad definition of sustainability is not easily regulated through existing methods (as there is for certifying carbon-neutrality/offsets) and there is no precedence for any such regulation.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

Free text box, no character limit:

A comparison with other international food standard setters should be included in this section to give some shape to reform, performance, cost, funding models and net benefit and outcomes.

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Yes

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

The costs and benefits in option two should also examine direct government funding FSANZ to the same level as comparable international bodies. It should also consider the impact of increasing the number of applications from international organisations developing novel foods who currently consider that Australian and New Zealand market is not big enough to justify an application under a risk-based approach.

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

Free text box, no character limit:

Food Frontier supports the Alternative Proteins Council (APC) in its position that the cost of doing business in Australia and New Zealand is a critical consideration in our international competitiveness stakes. Looking ahead food innovation will be central to increasing food production to meet the projected global population growth. For Australia and New Zealand to be part of the global food security response, making ourselves anti-competitive in a regulatory sense will send the message that Australia and New Zealand are not open for business.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 15:54:51

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Dr Narelle Fegan

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Food Safety Research Alliance (FSRA) – an alliance between federal/state government, industry and researchers/academics. These comments have been prepared by members of the Alliance but excluded the participation of members FSANZ and the New South Wales Food Authority.

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

Free text box, no character limit:

The FSRA considers that the methodology used to develop ratings that address the impact and extent of the policy problems identified reflects the extensive consultation undertaken during this work. In particular, the FSRA supports the points raised under 3.1.10 (Policy Problem 4, Sub-problem 2) in which it is identified that FSANZ lacks adequate resources to coordinate and apply data collected to inform 'food safety and composition'. The FSRA supports the adequate resourcing of FSANZ to assist in this role to protect public health in increasingly complex food systems.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Yes

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

The FSRA considers that the perception of competing priorities contributes to this confusion in industry and amongst regulators. A suitable definition of public health and safety may be found in the Ministerial Policy Guideline of 13 December 2013, in which it states that Public health and safety in relation to food refers to 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. Any definition should reflect sound and robust science underpinning public health and safety.

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 FSRA understands that FSANZ is currently required to consider public health and safety as part of its remit. Incorporating clarification of the scope of FSANZ's consideration could contribute to managing stakeholders' expectations of outcomes for applications and proposals. Further, more detail on the extent of the 'regard' that FSANZ is required to take of Ministerial Policy Guidelines would benefit all stakeholders

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

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:

More clarity for stakeholders about the regard given to Ministerial Policy Guidance, including a detailed reasoning for the acceptance or rejection of that guidance would be valued. The Food Regulation Secretariat should also play a greater role in this communication.

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:

The FSRA supports recognition of indigenous cultures in Australia and New Zealand but this matter is out of scope of the Alliance.

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 FSRA supports recognition of indigenous cultures in Australia and New Zealand but this matter is out of scope of the Alliance.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Prefer not to respond / I don't know

Free text box, no character limit:

For example, of the European Union Regulation 178/2002 (General Food Law) can be taken, where Article 1 of the Regulation states: This Regulation provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring the effective functioning of the internal market

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:

The FSRA supports an evidence -based, outcome focused, approach to formulating food safety regulatory measures, based on risk assessments that are well articulated and designed.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The indicative risk framework in Component 2.2.1 Table 10 forms a good base for the development of risk based framework for food regulatory measures. Criterion 5 can be expanded with consideration of i) whether similar applications/proposals have already been assessed in the bi- national system (i.e. to cover for variations in products, similar products by different applicants), ii) whether an evidence base has been compiled in support of regulatory decisions in other major global jurisdictions (i.e. EU, UK, US).

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:

The FSRA would not be impacted directly

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:

The FSRA would support the adoption of scientifically sound standards from reputable international organisations, based on established criteria for acceptance. Adoption of these standards would require comparison of populations and dietary consumption patterns with Australian and New Zealand populations. This would be a cost and time saving measure for both FSANZ and industry, reducing duplication of effort and allowing input of international expertise into Australian systems.

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 FSRA considers that there would be advantages for FSANZ in releasing resources, and also for industry.

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 FSRA considers that this could be feasible, but needs to be considered within the current lack of holistic consideration of the Code, and the lack of review of the safety of Standards to ensure safety is supported by current food consumption patterns (as an example foods containing caffeine). FSANZ has to be resourced to undertake reviews, which would be consistent with incorporating a definition of public health and safety in the revised Act.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Prefer not to respond / I don't know

Free text box, no character limit:

The FSRA would not be impacted directly.

What would be the impact of introducing new pathways to amend food standards for you?

Prefer not to respond / I don't know

Free text box, no character limit:

The FSRA would not be impacted directly.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

The FSRA would not be impacted directly.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The FSRA considers that the responsibilities of Ministers, making law for all Australian jurisdictions and New Zealand, should be carefully assessed before changes to decision making arrangements are considered further.

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:

The FSRA would not be impacted directly.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No comment.

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 FSRA supports recognition of indigenous cultures in Australia and New Zealand and considers that safety assessment could also be considered in the one-off investment, in addition to the nutritional and compositional assessment.

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

The FSRA represents an alliance of food safety researchers. The regular review of standards will allow for new scientific evidence to contribute to standard development, amendment or revocation where public health and safety is not supported

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

This holistic consideration needs to be clearly articulated within the revised Act, and FSANZ must be adequately resourced to undertake this as a priority activity in addition to horizon scanning activities, recognition of validated advanced testing methods, and improved data mining capacities. FSANZ should aim to build stronger links with national and international food safety and quality researchers.

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:

The Compendium of Microbiological Methods provides a good example of the use of Codes of Practice by FSANZ's to support the Food Standards Code.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Neutral

Free text box, no character limit:

The FSRA recognises the value of FSANZ as an independent scientific authority. Codes of Practice to support food standards, as laws, must be developed by FSANZ in consultation with industry,

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

The FSRA considers that application of modern board governance principles to the FSANZ board would be beneficial.

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 FSRA notes that not all nominating organisations are extant. An open market approach should contribute to the diversity of the board, and allow for specific skills gaps to be more readily addressed.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Prefer not to respond / I don't know

Free text box, no character limit:

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:

Increased or new industry levies may impact on impact on the food industry's ability to invest in research and innovation.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

The FSRA has no comment on specific entrepreneurial activities that FSANZ could undertake other than to note that the independence, or the perception of independence, is important for all stakeholders to have confidence in the food regulatory system. Moreover, increased entrepreneurial activities by FSANZ could serve to be a distraction from the organisation's principle 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Yes

How would this need to be implemented to be successful?

Free text box, no character limit:

The FSRA understands that such mechanisms exist. If there is a perception of the mechanisms failing, it suggests lack of resources or communication on the part of the FMM and/or FSANZ.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

The FSRA understands that such mechanisms exist. If there is a perception of the mechanisms failing, it suggests lack of resources or communication on the part of FRSC and/or FSANZ.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

FSANZ assuming a role of guardianship of existing and new databases (such as AMR) is supported. This will be a significant piece of work, involving identification of suitable data sources, liaising with other data holders, identifying stakeholders, mining these data and sharing results. These data would provide direction for food safety research organisations to improve the health of Australian and New Zealand consumers. This would require additional resources, being a new role for FSANZ.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Microbiological data, chemicals in foods, dietary consumption patterns, antimicrobial resistance bacteria, issue horizon scanning, foresighting. Preliminary work on data sharing has been conducted by the ISFR data working group and this should be revisited.

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 FSRA considers that formal arrangements with reputable international partners (such as the current arrangement between FSANZ and Health Canada about GM food safety) can reduce duplications and improve risk management

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

New and emerging food processing technologies, impact of changing environmental conditions on food composition and microflora, horizon scanning to identify knowledge gaps, risk assessment methodologies and risk assessment results.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Out of scope for FSRA.

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Out of scope for FSRA

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Out of scope for FSRA.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Prefer not to respond / I don't know

Free text box, no character limit:

Out of scope for FSRA.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Yes

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Yes

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Yes

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Yes

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

Free text box, no character limit:

Inadequate resourcing will continue to hamper FSANZ's efficiency, even with regulatory reform. The Australian and New Zealand governments should recognise the value of the safe food system that FSANZ, FMM and FRSC contribute to, along with jurisdictions and local governments. Food production and processing contributes significantly to the economies of both countries, at minimal costs to government 'FSANZ's substantive funding equates to \$0.70 per person per year in Australia and \$0.40 per person, per year in New Zealand' (p25, IAR).

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

The Food Safety Research Alliance (FSRA) is a collaboration between Federal and State governments, academic and research institutions and the food industry. The FSRA aims to support Australian food and agribusinesses, government, research institutes and academia to jointly identify and prioritise gaps in food safety research, and develop a sustainable model for future research collaboration, enabling mutual benefit for all.

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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:00:59

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Sarah Lochrie

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Fonterra Cooperative Group

Which sector do you represent?

Food Industry

Other: :
Fonterra Cooperative Group

What country are you responding from?

Trans-Tasman organisation

Other: :

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:

No comment.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

No comment.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

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:

No comment.

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):

Section 3 and 18 currently include 'public health' within their scope.

We acknowledge that FSANZ must currently have regard for the Ministerial Policy Statements including that which provides one such definition for public health: "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". Given policy guidelines are covered within 18(2)(e) of the Act, we do not consider that any further amendments are required in the Act. Further, the Policy Statement is clear that FSANZ's work complements the role of public health agencies.

While we acknowledge the important role of diet in preventing non-communicable diseases (NCDs) it should be recognised that it is the whole diet and lifestyle approach which leads to these outcomes not individual foods or specific nutrients of concern. Approaches that support long term health and nutrition should be given regard to by FSANZ where a change may be applicable across the majority of the food supply to help consumers make informed choices (E.g. added sugar labelling).

As far as we are aware, FSANZ's work complements public health agencies and FSANZ currently consider both short- and long-term health in their standard process. We therefore, do not consider any clarity on definition needs to be applied as FSANZ must have regard for Ministerial Policy Guidelines as part of their due process (18(2)(e) of the Act.

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

Prefer not to respond / I don't know

Additional comments (optional):

It is difficult to confirm the impact of a potential definition on FSANZ's approach to application and proposals without proposed wording. We are concerned that any definition for public health may be seen as a de-emphasizing safety within the objectives.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Neutral

Additional comments (optional):

Fonterra are concerned that clarifying the definition may have inadvertent unforeseen impacts on the interpretation of public health and safety within applications and proposals. As such, we do not consider any clarity on definition needs to be applied as FSANZ must have regard for Ministerial Policy Guidelines as part of their due process (18(2)(e) of the Act). If changes were made, any impact is dependent on the wording proposed.

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?

Prefer not to respond / I don't know

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Fonterra consider that FSANZ currently communicates consideration of Ministerial Policy Guidelines in their approvals reports and that this is working well. As such, we do not consider further transparency is required. Should revision be considered necessary, it may be a simple formatting approach to further highlight their consideration for those stakeholders unfamiliar with FSANZ approval reports.

Approval reports are available publicly for anyone to read and review. Perhaps, FSANZ's communication strategy could be improved to include some

education on current process such as commentary online to more clearly articulate FSANZ's role and approach to application of Ministerial Policy Guidelines within applications and proposals to help inform interested parties on where to find this information within approval reports. We also consider there is an opportunity for FRSC to provide guidelines to all government agencies to adopt a consistent communication approach.

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:

Fonterra consider that there are already good examples in NZ and Australian law that could assist in reflecting appropriate text for the FSANZ Act.

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:

No comment.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

Fonterra supports the introduction and development of a risk-based framework to allow FSANZ a more flexible and risk proportionate approach. Coupled with the ability to leverage overseas risk assessments this provides a real opportunity for step change within FSANZ. The development of such a framework will need to be developed and consulted on with stakeholders including industry.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

Fonterra consider that any risk framework will need a separate consultation to confirm, as well as inform on processes, decision making arrangement and how these align with risk level for consultations. The below are some very high-level thoughts and we look forward to further discussion on this in the future as development gets underway.

We consider the indicative framework in Table 10 is a good starting point for discussion, the examples provided don't adequately demonstrate how decision making would be made for the proposal. This is likely because the indicated criteria are a mix of both risk and decision related factors. Table 10 includes some relevant aspects which we'd expect to see in a risk assessment such as "risk to public health or safety" and "evidence base", however, others such as "expertise" may be less relevant to inform the risk as this can be obtained as needed. We believe that "strategic priority" should be weighted appropriately to reduce the risk that work which doesn't align isn't progressed.

We note that risks to trade, export and reputation are missing and could be added in future development.

We recommend that the framework applies a weighting of each of the criteria to the risk, and that weighting is clear in the framework.

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:

Fonterra considers that introducing a risk-based framework will enable more timely responses to applications and proposals. It would also allow for FSANZ's resources to be prioritized accordingly, enabling more time to be made available for the more challenging applications and proposals. It would

also provide greater agility in responding to risks and opportunities as a key enabler for innovation. Further, for industry this helps provides transparency and visibility for risk assessment prior to making applications reducing workload for both industry and FSANZ where discussion may otherwise go back and forth.

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:

FSANZ's ability to accept risk assessments from international jurisdictions would enable a timelier response to FSANZ through removing duplicative work that has already been completed elsewhere. This is particularly important in low-risk applications (e.g. globally approved processing aid) as it free's up FSANZ's time to be spent on the higher risk applications and proposals (e.g. P1024).

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:

Fonterra consider that in some cases adoption of international standards may be appropriate and could be a useful tool for FSANZ to enable a risk proportionate response. However, some form of risk-based review and consultation should be undertaken to ensure alignment with the local food regulatory system. As such, we do not support automatic adoption without consultation or consideration for the local food regulatory system. We are particularly concerned about the Table 9 reference to "no public consultation or ratification by the Forum required". We do support a minimal check pathway to leverage international risk-assessments and standards where applicable. The risk with any automatic adoption is ensuring regulatory fit within the Code and ensuring differences in country dietary intakes are considered.

While the concept to in the first instance adopt new Codex standards seems logical there is always the detail here to consider. We use this as one example to demonstrate why minimal check may be a better solution: Codex standards are developed through consensus with country delegations having input and debate. As such, final standards may not always include perspectives raised by the Australian or New Zealand delegations for inclusion, automatically adopting such standards means these considerations might not have an opportunity for localisation of the standard.

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:

Fonterra support the principle of a minimal check pathway for low-risk products. We agree that this would help facilitate risk-based handling of applications and proposals thereby improving efficiency for FSANZ. Permitting more time to be spent on higher risk work.

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:

We support the concept of permitting FSANZ to introduce new pathways to help ensure the food regulatory systems maintains agility into the future.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

Introduction of new pathways will potentially result in more efficient and timely reviews.

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:

No comment.

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:

This provides opportunity for decisions to be made in a more flexible and efficient manner. There will need to be parameters around delegation to ensure its appropriate and fit for purpose. As well as a clear framework or communication strategy to ensure delegation is transparent.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

No comment.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

Fonterra consider that delegating decision should result in more timely standards development.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Fonterra consider it will be important to have delegation clearly allocated and communicated in a transparent manner. Any delegated decision maker needs to be at the appropriate level to make such decisions and have the technical expertise to be able to make an informed decision with independence and impartiality from other interests.

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:

No comment.

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:

No comment.

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:

Fonterra consider it would be a poor use of resource to undertake reviews based purely on a time basis. We propose monitoring standards for performance and developing criteria for triggering reviews to occur. This should include timeframes for when problems are identified with a standard and action to be taken. Any programme implemented should include a robust triage process including consultation with industry to assess whether there are any issues with the standard warranting a review.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There is likely some overlap here related to international standard recognition. Changes to international standards may be included as a potential trigger for FSANZ to review a standard locally for impact.

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:

Fonterra are supportive of guidelines provided it is clear how they are intended to be used. That is as guidance that is non-binding. Such guidelines should be developed in collaboration with industry as key stakeholders in the use of such documents. FSANZ already have the capability to undertake this type of work, we would not want to see core activities deprioritised to undertake guideline development. Its also important to recognise that there is ongoing maintenance of documents to ensure they remain fit for purpose and aligned to standards.

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:

Not a current issue, but a good example of where a guideline has been a useful to supplement a Standard is related to substantiation of health claims (Std. 1.2.7). In this situation, the standard could not reasonably detail best practice so the supplementary information in the guidance document is useful to help inform industry on requirements.

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:

No comment.

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:

We would expect a more practical and consistent application of the Food Standards Code. This may be particularly helpful for jurisdictional alignment on interpretation. We do not consider that industry would be responsible for developing guidelines. We would be a key stakeholder in supporting their development. But to ensure their credibility and use by enforcement agencies these would not typically be led by industry.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

No

Free text box, no character limit:

No comment.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

Fonterra strongly oppose the removal of the expedited approvals pathway as this will have a significant effect on innovation within the Australia New Zealand food sector. Without certainty on time to market and a mechanism for exclusivity to help protect investment, there is a risk that our food regulatory framework will become a barrier to market entry. Ultimately resulting in loss of research and development, reduced innovation, and a more limited range of products impacting on consumer choice. Without certainty on timing, overseas suppliers may choose to bypass and not launch their products in Australia and New Zealand.

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:

We understand that FSANZ has significant cost pressures and resourcing constraints. However, Fonterra do not support a levy on industry because the core functions of FSANZ are for the overall good of the food industry. Industry can currently pay for applications and receive the direct benefit of the application; we support this user pays approach. Should any new regulatory costs be progressed this may have an impact on the cost of food to the public, inflation and contribute further to the cost-of-living crisis.

Should this component progress, it requires a dedicated consultation to facilitate a productive discussion on the topic. We consider any levy being proposed must meet the MPI principles for cost recovery – transparency, justifiable, efficiency and equity. And there must be consideration for the difference in support provided by FSANZ across Australia and New Zealand (Chapters 1 & 2 only).

We have significant concerns over the ambiguity in the proposal as it relates to the top “5000 food businesses”. As this is not equitable and there are many questions raised over how this will be applied.

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:

A focused consultation on this needs to be undertaken should it be progressed. Any criteria should be assessed against the cost recovery principles.

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:

A focused consultation on this needs to be undertaken should it be progressed. It is important that any levy is subject to annual review and there is transparency on what it is being used for.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

While we agree this is consistent with a ‘user pays principle’ we are concerned it may have a negative effect on innovation. This risks becoming a barrier to market entry particularly for small businesses as the process is already complex and costly. The current paid expedited pathway permits applicants to obtain commercial capturable benefit via an exclusive use period, these are not always provided to unpaid applications as the benefit owner may be more than one company.

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:

Any additional activities undertaken by FSANZ should not impact their independence or credibility as a science-based organisation. It should also not impact on resourcing for core functions.

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:

No 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:

No 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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

No comment.

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

No comment.

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:

Fonterra continue to recognise FSANZ as a science and evidence-based agency which should not require consensus from the FMM when setting the agenda, to ensure politics doesn't influence the agenda. There must be a separation between politics and the science in agenda setting. As such, we do not see a role for the FMM in setting a joint agenda.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

We do not support joint prioritization.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

No comment.

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 and FRSC currently have the opportunity to engage. Provided the outcome enabled greater understanding and didn't reduce flexibility or system agility there may be opportunity for further engagement.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

We do not consider that legislative change is needed to improve collaboration between these parties.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

FSANZ is currently resource constrained and we consider these should be priority to solve before provisioning additional resource demands and responsibilities. There are currently multiple databases available and while there may be some benefit in FSANZ assuming responsibility for some of these they could equally be managed by other agencies with support from industry to ensure the validity of any product data. We consider that there may be an opportunity for FSANZ to partner with other government departments delivering a more robust, cost effective and agile approach to the coordination of data on food and nutrition.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Food composition data and Australian food recall information are logical fits for FSANZ as they can be directly related to FSANZ core activities.

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:

Fonterra support collaboration between FSANZ and international partners. We agree this would reduce duplication and help manage risk.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Risk assessments, food approvals and emerging food safety risks.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Statements of intent as legally binding statements must be consulted on.

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:

No comment.

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:

Fonterra agree that guidelines could help improve consistent interpretation and enforcement provided they are developed in consultation with stakeholders including industry and it is clear that they are non-binding as there can be more than one way to achieve a desired outcome.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

No 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:

FSANZ already collaborates with jurisdictional enforcement agencies through the Implementation Subcommittee for Food Regulation (ISFR) but we note the high level roles in attendance here. We consider any inconsistency in interpretation could be managed in this forum including establishing ways of working to filter down interpretations to individual enforcement agents.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

Free text box, no character limit:

No 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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

No comment.

What are the current delay costs to industry?

Free text box, no character limit:

No comment.

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:

No comment.

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

No 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?

Prefer not to respond / I don't know

Free text box, no character limit:

No 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:

No comment.

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

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:

No comment.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

- Fonterra continues to support robust and fit for purpose food regulation that ensures the food supply is safe, and creates trust with both local consumers and export markets. It is important that our food regulatory systems remains agile and supports trade, innovation and continued local investment.
- Fonterra supports in principle Option 2 to Modernise the food system, however, there are some qualifications necessary as outlined below. We look forward to future refinement of components within this option.
- Paid expedited pathway must be retained as this provides industry with certainty on timing for bringing new products to markets.
- We strongly support a risk-based framework for the development of food regulatory measures. Including the consideration for overseas risk assessments.
- Fonterra support an outcomes-based food regulatory system that utilises a risk-based approach to enabling the delivery of efficient and effective food regulatory measures.
- We support the principle of a minimal check pathway to bring lower risk products to market.
- While not within scope for this review, we continue to suggest that trade be included as an objective and that the ability of FSANZ to utilise self-substantiated pathways should be reconsidered to help manage resourcing.
- We have selectively chosen to respond to only aspects of the consultation where we have some expertise to lend to the discussion.

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:

No comment.

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:05:25

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Food for Health Alliance

Which sector do you represent?

Public Health

Other: :
Obesity Policy Coalition

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:

We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness and that industry prospers, this is acknowledged in the Executive Summary of the IA which states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity." Given this, the main purpose of this review should be to address what FSANZ's role, as a key player in the food regulatory system, is to address the failings of the food regulatory system. We believe that the main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all and as a result the methodology completely fails to factor this in.

The vast majority of Australian adults and children have poor diets, with more than a third of energy coming from unhealthy food, and poor diet contributing 5.4% to the burden of disease. Around two thirds of Australian adults and one in four of Australian children are above a healthy weight, with overweight and obesity contributing a further 8.4% to the burden of disease in this country. Together these risk factors account for the greatest burden of disease

We remain concerned with the approach undertaken to identify and prioritise policy problems as raised in our submission on the draft Regulatory Impact Statement. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The IA fails to acknowledge the very real threat of poor diets, which lead to overweight/obesity, and several diet-related diseases including type-2 diabetes, cardiovascular disease and cancer. This is a clear misalignment with other government strategies and investments, including the National Preventive Health Strategy, the National Obesity Strategy, one of the current priorities of the food regulatory system itself (supporting the public health objectives to reduce chronic disease related to overweight and obesity) and policy statements on the role of FSANZ which clearly recognise the role of food regulation as one facet of a range of strategies playing an important role in preventing and reducing disease, illness and disability (<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-Policy-Statement-on-the-Public-Health-Role-of-FSANZ>).

As such, the current methodology is flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). The failure to include this policy problem flows through the IA as each component should be assessed against it and new components to address this policy problem are absent from the IA entirely. Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 (Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible) focuses solely on the time and costs for bringing foods to the market and fails to include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations (which is clearly a non-option), and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

We do not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3 of the IA, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and public health and consumer organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the IA. FSANZ and the food regulatory system, as a major part of the broader food system, have the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and in safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ's responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1 (Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures)
- Policy Problem 2, sub-problem 2 (Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews)
- Policy Problem 3, sub-problem 2 (Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions)

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
- relate to food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3), as is currently proposed in the IA. These sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

We note also that the failure to include many of the long-term health sub-problems within the policy problems has resulted in these issues being entirely excluded from the assessment of which issues are most detrimental and therefore of highest priority to solve.

• Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

— Sub-problem 1 | Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures

We support the ratings for this sub-problem in the IA - high impact (3) and large extent (3), given potential to undermine public health and safety but note that there are no reforms proposed under Option 2 that resolves the problem of 'how' FSANZ should consider long-term risks to health when developing food regulatory measures.

— Sub-problem 2 | There remains some confusion about the factors to which FSANZ has given regard in its decision-making, and how this aligns with the objectives of the Act

Ministers retain overall responsibility and accountability for the food regulatory system, if this is undermined in any way (particularly through not considering Ministerial policy guidance or not communicating effectively on consideration of guidance) then responsibility and accountability, and ultimately public and stakeholder confidence, in the food regulatory system is diminished. The rating for this sub-problem should be higher - level of impact should be at least moderate (2) and extent of impact large (3). Note that nothing proposed under Option 2 will address this as there is no requirement to prioritise compliance with Ministerial policy guidance above other considerations.

— Sub-problem 3 | The Act is silent on the needs and commitments of government to First Nations and Māori Peoples

We support the ratings for this sub-problem in the IA but note that nothing proposed under Option 2 will necessarily address this, and meaningful improvements could be available under Option 1.

• Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

— Sub-problem 1 | Statutory processes are rules-based rather than outcomes-based

The IA acknowledges that the vast majority of applications are processed within timeframes but fails to acknowledge that the significant problem with delays lies in the processing of proposals. The reforms in Option 2 only act to make applications even more efficient, despite the majority already being completed within timeframes, and no reforms are proposed to address the delays in progressing proposals.

We consider the level of impact rating of high (3) given to this sub-problem inappropriate in reference to applications and suggest a rating of moderate-low (1-2) - the impact has not nearly the same magnitude as risks to short-and long-term health and should therefore not be rated as high. The extent of impact is extremely limited and should be given a rating of limited (1) in relation to applications as the problem only has significant negative implications for a small cohort of industry stakeholders. We note that nothing proposed under Option 2 will necessarily address claimed inefficiencies in resourcing, particularly as Option 2 proposes to only speed up some applications, most applications already assessed according to statutory timeframes, and applications are acknowledged by FSANZ as taking up minimal resources.

We would support the IA ratings for this sub-problem to the extent this relates to issues with progressing proposals but note that the framing of this problem does not encompass proposals.

— Sub-problem 2 | Current requirements create barriers for Indigenous foods to be brought to market

The IA has not articulated how "diets and needs" are linked to "barriers to bringing traditional foods to market". It has also not explained why traditional foods need to interact with novel food provisions of the Food Standards Code, demonstrate safety and be approved via an application as the vast majority of foods do not need to follow these processes to be brought to market. Given the absence of evidence and framing of the problem, the level of impact and extent of impact should both be low (1). We note also, that to the extent this is an issue, none of the reforms proposed under Option 2 will address this.

— Sub-problem 3 | Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews

We support the ratings for this sub-problem in the IA - high impact (3) and large extent (3), given potential to undermine public health and safety.

However, we note that this is not necessarily related to the Act, and resourcing constraints could also be overcome under Option 1. Option 2 presents only limited options to address this, and other options to address funding decreases (for instance an increase in substantive funding for FSANZ independent of cost-recovery mechanisms) exist under both Options 1 and 2.

— Sub-problem 4 | FSANZ generally defaults to developing food standards, but other regulatory measures could be more efficient to create

We note that the 'other regulatory options' are all available to FSANZ currently and no change is proposed under Option 2 that could not be done under

Option 1. The non-use of other regulatory measures is in itself necessarily only a low impact and limited extent (should both be rated 1); rather, it is the impact of that use/non-use that is of relevance, and this is covered elsewhere in the reform options.

• Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

— Sub-problem 1 | Current legislative provisions prohibit nominations and appointment processes for the FSANZ Board from adopting best practice
We agree with the ratings given.

— Sub-problem 2 | Long-term decreases in funding has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions

We agree that the level of impact of this problem is considerable and that the current rating of 3 is appropriate. However, the extent of the problem extends far beyond implications for stakeholders and affects all Australians and New Zealanders, as such the extent should be rated 3. Option 2 presents only limited options to address this, and other options to address funding decreases (for instance an increase in substantive funding for FSANZ independent of cost-recovery mechanisms) exist under both Options 1 and 2.

• Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem and support the sub-problem 1 and 2 ratings, noting that reforms proposed under Option 2 can all be done under Option 1 for each of these sub-problems.

— Sub-problem 3 | Inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies, while potentially undermining management of foodborne risks (Australia only)

Food safety risks are currently extremely well managed in Australia, as such the level of impact should only be rated as moderate (2). We suggest that a race to the bottom, in an effort to align requirements and minimise compliance costs for industry, is a real potential and will instead present further risks not considered in the IA and therefore suggest an extent of impact rating of large (3).

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):

The Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards and amending s3 and s18 of the Act to include a definition of public health and safety may address this minor issue.

This change is an important legislative clarification but is unlikely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has long been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA.

What is missing from the IA and the reform options is how this will be done. Simply adding a definition will not reduce confusion about how FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

FSANZ could also alleviate any confusion by simply better communicating its consideration of short-and long-term health risks to stakeholders when briefing on decisions made.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform: "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated priority role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation 1: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive but not in and of itself in any way effective in ensuring that FSANZ protects public health and safety when undertaking its work.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly recommend that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)). To ensure that Best Practice Element 1 is complied with, Ministerial Guidelines must take precedence over other things to which FSANZ must have regard.

We note that the way FSANZ communicates its consideration of all things to which it must have regard (as set out in s18(2)(a)-(e)) would support greater transparency in the development of food regulatory measures and communication about all matters should be publicly available not just in relation to Ministerial Guidelines.

Recommendation 2: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, as proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising

Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect First Nations and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Recommendation 3: Specific consultation with First Nations and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not, in and of itself, ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the 'Public Health Test' as proposed by The George Institute for Global Health in their submission, as set out below.

PUBLIC HEALTH TEST

Priority setting should consider:

- the burden of disease attributable to the food supply [1]; and
- estimated benefit of change to the food supply from the work under consideration.

Decisions should:

- discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;
- discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;
- encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines [2];
- reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3]
- address the impact on the burden of disease attributable to the food system;
- include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;
- assess the cumulative impacts of the introduction of new foods on public health outcomes; and
- 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 vulnerability assessment of priority populations to diet-related disease.

[2] Noting that updates are considering sustainability of the food supply.

[3] For example, added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

Recommendation 4: A Public Health Test is built into the Act to guide FSANZ when setting priorities and making decisions.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The IA provides extremely limited details about the risk-based framework. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer and result in a regulatory system that favours industry benefits over public health. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

We strongly support a separate consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

We strongly support the IA's proposal that separate work is undertaken to determine the decision-making arrangements for triaging applications and proposals and deciding overall risk profile and this should form part of the separate consultation.

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Consultation should result in criterion, and tools to assess whether each criterion is met, that are clear and unambiguous. There needs to be clear guidance on how immediate and broad reaching economic impacts will be balanced with long-term and broad reaching health impacts and which should be prioritised.

We strongly support the suggestion that the risk-framework is subject to regular review to ensure that it remains up-to-date and fit-for-purpose and note that this must include stakeholder consultation and input and signoff from the FMM.

Recommendation 5: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to the previous question for further details.

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:

There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact have been properly assessed.

Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes - for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

The IA states that the determinations of 'overseas bodies' could be adopted, we only support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice and what does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making processes, and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals- only for applications. This risks further prioritising commercial decisions at the potential expense of public health as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act - to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals and standard reviews to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

We note that to adequately consider whether s150 non-delegable duties could be removed or revised a thorough assessment of the current exercise of these powers should be undertaken. For example: how often does the Board approve/not approve what FSANZ puts to them and for what type of decisions (minor applications & proposals / general applications & proposals / major applications & proposals)? What changes were made as result of approval not being granted and did this result in better outcomes for public health?

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the 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?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that do not require legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

Timeframes for standard reviews

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act and be guided by the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual. The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

No response

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:

This issue should be considered as part of the broader consultation on the risk-based framework.

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

-Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals

The reform options in the IA will not result in more proposals being progressed - the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to "deliver three proposals per year". In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from "decision to prepare" to "notification to FMM" with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Some examples of delays in processing proposals:

- P1010 Review of Formulated Supplementary Sports Foods – commenced June 2019, consultation paper 2 completed Sept 2023, with no further timeline noted on FSANZ workplan.
- P1028 Infant Formula Products – commenced July 2013, numerous waiting periods between consultation periods and now final ministerial notification is for late June 2024.
- P1047 Review of regulatory nutrient reference values – Proposal prepared in August 2018 – and progress has been delayed due to other priorities.
- P1049 Carbohydrate and sugar claims on alcoholic beverages – commenced late August 2018 – proposed notification to ministers December 2024.
- P1056 Caffeine Review – commenced early June 2021 and end of consultation period March 2023 with no further dates for progress.

Recommendation 7: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly ahead of smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation 8: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation 9: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

We support the amount proposed in the assumptions to the Cost Benefit Analysis (\$2,000) and note that for large business this amount is negligible.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – these favour big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. This sort of activity will also likely negatively impact FSANZ's independence. Furthermore, it is also not 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?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In addition to the Public Health Test, the following factors should be considered:

- Long-Term Health Outcomes: Prioritising interventions that have the potential to achieve sustainable improvements in public health outcomes over the long term is essential for ensuring the effectiveness and impact of food standards and regulations and joint prioritisation should focus on initiatives to achieve this. This involves considering the cumulative effects of interventions on disease prevention, nutritional status, and overall well-being across the population.
- Scientific Evidence: all decisions should be based on non-conflicted scientific evidence regarding the impact of food standards and regulations on public health. This should include data on nutrition, dietary habits, and epidemiological studies linking food-related factors to health outcomes.
- Vulnerable Populations: Consideration should be given to vulnerable populations such as children and indigenous populations. Prioritising measures to protect these populations from long-term health risks is essential for safeguarding public health.
- Emerging Issues: Anticipating and addressing emerging long-term health impacts of food issues such as ultra processing and novel food technologies is critical for protecting public health in the long term. Continuous monitoring of emerging trends and scientific developments is necessary for identifying and prioritizing new challenges.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

No

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system?
How so?

Yes

Free text box, no character limit:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured. FSANZ assuming a role as a database custodian for Australia has the potential to significantly improve intelligence sharing across the regulatory system, leading to more informed decision-making, better risk management, and enhanced protection of public health and safety in the food sector through:

- Centralised Information Management: As a database custodian, FSANZ could centralise the management of relevant data and information and consolidate disparate data sources into a single, accessible database, FSANZ can facilitate more efficient data sharing and collaboration.
- Enhanced Data Integration: By integrating data from multiple sources, FSANZ can provide a comprehensive view of the food regulatory landscape. This integrated approach would enable FSANZ to identify trends, patterns, and emerging risks more effectively.
- Analytical Capabilities: FSANZ can leverage its expertise in data analysis, risk assessment, and scientific evaluation using the database. By conducting data analytics, trend analysis, and risk profiling, FSANZ can identify high-risk areas, prioritize interventions, and guide evidence-based decision-making.
- Public Transparency and Engagement: FSANZ can enhance transparency and public trust by providing access to relevant information, data, and reports through its database. By promoting openness and accountability, FSANZ encourages public participation, feedback, and scrutiny of the regulatory process, ultimately enhancing regulatory effectiveness and legitimacy.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, evidence-based development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

Data that should be collected and curated includes data on:

- Food supply including composition
- Sales data
- Dietary intake (consumption data): Data on food consumption patterns, dietary habits, and consumption trends among different population groups. This information can help identify dietary risk factors associated with chronic diseases such as obesity, diabetes, and cardiovascular disease, and guide the development of targeted nutrition interventions and policies.
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Dietary Exposure Assessment Data: Data on dietary exposure to ultra processed food markers including additives and emulsifiers, contaminants, pesticide residues, and other chemical substances in food.
- Nutritional Data: Data on the nutritional composition of foods, including macronutrients (e.g., protein, fat, carbohydrates) and micronutrients (e.g., vitamins, minerals). This data is essential for assessing dietary intake patterns, identifying nutrient deficiencies or excesses, and informing public health initiatives aimed at promoting healthy eating habits.
- Food Labelling and Packaging Data: Information on food labelling practices, ingredient lists, nutrition labels, allergen declarations, and packaging formats. This data is crucial for monitoring compliance with food labelling regulations, identifying labelling discrepancies or misrepresentations, and ensuring consumers have access to accurate and transparent information about the foods they consume.
- Consumer Behaviour and Perceptions Data: Data on consumer knowledge, attitudes, beliefs, and behaviours related to food safety, nutrition, labelling, and purchasing decisions. This data can help identify barriers to adopting healthy eating habits, address consumer concerns about food safety and quality, and design targeted communication strategies to promote informed consumer choices.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Prefer not to respond / I don't know

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Guidance on the intention of food standards and how to interpret them (particularly for enforcement purposes) would provide consistency in interpretation across sectors and jurisdictions and provide clarity and remove interpretive doubt. This would also enable stakeholders to better access information to allow them to comply with the Food Standards Code.

Resourcing of FSANZ to enable it to perform any elements of this guidance role must be additional and not at the expense of FSANZ's existing functions.

We recommend that Statements of Intent are prepared at the same time as a new standard/ variation.

Statements of Intent should support FSANZ objectives as set out in s3 of the Act and be prepared as a priority to ensure those objectives are met.

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry, but where funding is scarce, this would be a lower priority.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

• Costs: consumers and governments

The Cost Benefit Analysis notes that Option 1 has delivered good public health and trade outcomes, and it has prevented the market failures it was designed to address. Whilst this may be the case for short-term health outcomes and for trade outcomes this is most certainly not the case for long-term health outcomes which have deteriorated over the 30 years in which FSANZ has been in existence – this should be explicitly noted as a cost to consumers and governments.

- Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments, these include:

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (primarily proposals). This can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study below.

The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:

--- measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and

--- measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).

The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases.

A quantification in the Cost Benefit Analysis of the proportional increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products and their displacement of healthy options, as facilitated by FSANZ within the food reg system.

We disagree with the following costs attributed to consumers:

- ‘Small effect on consumer choice through limitation in range of food products available due to deterrent effect, delays in processing applications’. There is an enormous range of products on the market for consumers to choose from and the vast majority of foods do not need to go through the applications process to enter the market – this cost is negligible at best.

- ‘Reduced consumption on food items due to increased costs from cost recovery initiatives’ – we disagree with the inclusion of this as a cost. With only 17 applications approved each year this is very unlikely and even if costs were to be passed on it is for such an insignificant proportion of the food supply each year this is likely to be negligible, Consumers can also choose other foods to purchase so the passing on of costs in relation to a few products is unlikely to result in reduced consumption on food items generally.

• Benefits: consumers and governments

The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses product safety before they are put on the market are not included in the Cost Benefit Analysis.

• Benefits: industry

Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the revenue industry receives from products that enter the market under the 12 applications approved each year.

Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions.

We note the benefit noted that expediated pathways provide certainty for business in terms of approval timeframes – this certainty exists without expediated pathways as there is always a timeframe for applications to be processed – this benefit is retained under Option 2 and should be included there also.

- Benefits: governments

There are benefits to governments of FSANZ:

- ensuring foods are safe
- doing food recalls
- progressing proposals
- these should all be included in the Cost Benefit Analysis.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made.

We disagree with the general assumption for public health benefit per proposal/review/application – these are not equal and should not be treated in the same way.

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. Non-labelling examples which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on neural tube defects and goitre/iodine deficiency.

- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?

- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Costs and benefits for all impacted stakeholders (industry, consumers, governments and FSANZ) for each of type of FSANZ work should be separately noted (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews and the same for governments, industry and FSANZ) so that costs and benefits for each stakeholder and type of work can be individually assessed and considered for each reform.

The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things). How is this measured and factored into the Cost Benefit Analysis?

Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

Recommendation 10: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

CASE STUDY - Pregnancy warning labels on alcohol

The proposal for pregnancy warning labels on alcohol provides a good case study on the economic costs and health impacts of delays in progressing public health proposals in the current food regulatory system.

In October 2018, the Ministerial Forum on Food Regulation agreed that a mandatory standard for pregnancy warning labels on alcohol should be developed and asked FSANZ to develop it as a priority. This work was completed in July 2020 when Ministers accepted a proposed draft standard – meaning that the time to complete the proposal was just under two years.

The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement for Pregnancy Warning Labels on Packaged Alcoholic Beverages (DRIS), published in October 2018. This DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at \$1.18 billion per year in Australia and \$171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at \$75 662 (AUD). The DRIS is unable to predict the exact number of cases of FASD that will be prevented as a result of the labelling change, however the analysis concluded that only 183 cases of FASD in Australia per year, representing 1.18% of the total FASD cases per year in Australia, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure the economic cost per year incurred for each year of delay is estimated at \$13.8 million, while the health impact is 183 additional individuals living with FASD.

The IA must include analysis of this type to provide a complete picture of the costs of the current system, even if those costs cannot be precisely determined. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the likely impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels are significantly less likely to be implemented in their current form under the reforms proposed in options 2 and 3, because of the increased importance given to trade and regulatory impact concerns. This brings with it a significant health and economic cost, as outlined above.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We note that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health and health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals:

- In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing for industry should be clearly set out, detailed and quantified. As noted above, the delay costs to consumers and governments as a result of timing of proposals should be quantified.
- In relation to applications: More specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

An assumption is made that delay costs to industry from applications are passed on to consumers. There is no reason to assume that if the application process were any quicker that this would result in lower prices to consumers. Profit is generally maximised - we disagree with the inclusion of this cost. In respect of the general assumption for the delay costs for industry per month/per application, we note that the amount specified is based on costs provided by the food industry, this is not independent or verifiable and we recommend that independent economic data is used and applied to real world figures.

We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that these delay costs noted in the Cost Benefit Analysis currently meet that requirement.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Yes

Free text box, no character limit:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

- Costs: consumers and governments
Health, healthcare system and associated social and economic costs should all be quantified clearly for consumers and governments.

As there are no reforms to ensure proposals are progressed in a more timely manner under Option 2, the same health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health (proposals) remain under Option 2. These costs should be included and can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, or research that models economic impacts of reform. See a case study in response to the Net Benefit question for Option 1 above.

Assume proposals should be completed within 3 years – each year delay after that should be factored in as a cost to consumers and governments given the health benefits that would have been realised if it were processed efficiently – an analysis should be done of all proposals approved in the past ten years and the average time it took from getting on FSANZ books to being finalised, gazetted and implemented. Any time taken to complete a proposal in excess of 3 years should be considered a delay cost to consumers and governments.

The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease and dental health, including:

- measures that are considered and not progressed at all or stalled for many years (for example P1047 Review of regulatory nutrient reference values which was initiated in 2018 and has been stalled for six years); and
- measures that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health (for example the use of a voluntary Health Star Rating System as the Front of Pack Labelling initiative (an informative scheme) in Australia when international best practice suggests mandatory interpretative schemes are most effective).

There are no reforms proposed under Option 2 that will address these issues and as such these costs should be included under Option 2 also.

The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards. As there are no time limits proposed for progressing proposals under Option 2, these costs remain and should be included in the Cost Benefit Analysis. The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases. There are no reforms proposed under Option 2 to reduce these costs and as such these costs remain under Option 2 and should be included in the Cost Benefit Analysis.

A quantification in the Cost Benefit Analysis of the proportion increase in products which promote public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food reg system.

The health and economic costs borne by consumers and governments of the risk framework proposed under Option 2 which will result in less scrutiny and will not ensure that all products undergo full safety assessments before they are put on the market should be included in the Cost Benefit Analysis.

• Costs: consumers

A cost is attributed to consumers for industry passing on the industry wide levy proposed under Option 2. A \$2,000 levy imposed on a large business is entirely negligible and it is extremely unlikely this would be passed on to consumers. In the event that it was, \$10m per annum passed on to the adult population of Australians is around 50c/year.

• Costs: FSANZ

We note the cost attributed to FSANZ under Option 1 'substantial operational costs associated with administering an outdated and inflexible Act (e.g. time involved in assessing proposals through a broadly one-size-fits-all approach with limited ability to draw on international evidence-base)' remains a cost under Option 2 as no reforms are being proposed that will change this for proposals (only for applications) and this should be included as a cost for Option 2.

• Benefits: industry

Industry generates applications for commercial reasons not public health reasons. The Cost Benefit Analysis should include in industry benefits the revenue industry receives from products that enter the market under the 12 applications that will continue to be approved each year under Option 2 and the additional 5 that will be approved under Option 2 assumptions.

Industry benefits should include the benefits industry receives from FSANZ undertaking food recall functions, these will continue under Option 2. Timeframes for applications will be retained under Option 2 and therefore certainty for business in terms of approval timeframes should be noted as a benefit.

• Benefits: Governments

There are benefits to governments of FSANZ:

- ensuring foods are safe,
- doing food recalls
- progressing proposals

these should all be included in the Cost Benefit Analysis.

We reiterate our comment from above in our response to the question on Net Benefit for Option 1 as the same applies for the Option 2 analysis: We disagree with the general assumption for public health benefit per proposal/review/application – these are not equal and should not be treated in the same way:

- The proxy used to quantify public health impact is not appropriate for proposals as a whole. This is now 14 years old and is not reflective of the nature of many proposals FSANZ undertakes. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women). It is also not sufficient to claim attributable global public health benefit without either quantifying the increased global public health risk/cost. Non-labelling examples which would give sufficient confidence for such an assumption would be the impact of folic acid and iodine fortification of bread on NTDs and goitre/iodine deficiency.

- A proxy for applications should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated. An assessment should be done on all applications made over the past 10 years - what proportion of these contributed to foods that are consistent with dietary guidelines and what percentage are inconsistent with the dietary guidelines (i.e. A1290 - Citicoline as a nutritive substance for use in formulated caffeinated beverages which only deals with energy drinks which have a net negative impact on consumers) - what is the average cost/benefit to consumers based on this?

- A proxy for standard reviews should be specifically developed (not the \$1.3m used for proposals) and the rationale for that amount articulated.

In addition to not including many relevant costs and benefits, the Cost Benefit Analysis does not contain enough specification and detail for the costs and benefits attributed to consumers and governments and does not provide rationale and evidence for assumptions made.

Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.

The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)?

Separate definitions of short-term public health benefits and long-term public health benefits should be set out.

Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

Free text box, no character limit:

Data and expertise is available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

There is sufficient data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the IA of the impact of the proposed reforms on public health outcomes.

We know how many Australians are not consuming the optimal diet for good health, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and cancer. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia. We also have data on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the IA must assess the impact on health outcomes and economic burden from estimated changes resulting from the reforms to the number of Australians (and New Zealanders) who have a poor diet, are overweight and obesity and suffer from preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The IA can, however, quantify the economic and health costs of a slight change in these levels. For example, a 2015 report estimated the annual cost of obesity in Australia as \$8.6 billion in direct and indirect costs (<https://www.pwc.com.au/publications/healthcare-obesity.html>). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of \$21 million per year.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

In relation to the analysis on proposals / applications / standard reviews specifically:

- Proposals

The IA states that Option 2 will continue to see 3 proposals delivered each year (i.e. no change in the number of proposals) but notes that these will be processed in a more 'timely manner'. The assumptions do not provide a timeframe - this needs to be quantified - as noted our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.

The IA assumes that resourcing limitations are preventing FSANZ from completing proposals in a timely way; however it is likely that the contentious nature of some proposals (e.g. putting pregnancy warning labels on alcohol) and industry pressure is also a significant factor. These factors should be included in the Cost Benefit Analysis.

Whilst the majority of proposals have a public health benefit this is not true for all (e.g. added sugar and carb claims on alcohol have been identified by FSANZ as potentially increasing consumption thus harm) - this also needs to be factored in.

- Applications

We note the Option 2 assumption that processing time for other (i.e. non-low-risk applications) will be 9 months under Option 2. This is the equivalent of the paid applications pathway under Option 1. There is no reform proposed that the legislated timeframe for applications will change other than that the expedited pathway (paid) for applications could be removed - no rationale for the assumption that timeframes for 'other' applications will be reduced from 21 months to 9 months is given. This should be clearly set out and justified.

Applications are largely for commercial benefit and not public health outcomes- this needs to be reflected in the Cost Benefit Analysis as a benefit to industry.

It should not be assumed that every application has a consumer benefit. Many applications result in unhealthy food products entering the market, this should be factored in, or if that is not possible with available data, then at least they should be considered neutral and not positive from a public health perspective.

Offering consumers 'more choice' should not be considered a benefit if the food/product on offer is ultra-processed or otherwise is likely to contribute to diet related disease and poorer food security.

There is no rationale provided for the assumption that 80% (14/17) of applications will be low risk - this should be clearly articulated.

There is no factoring in of the costs of introducing a risk based approach to assessing FSANZ's work - Option 2 assumes 14/17 applications a year will be low risk and therefore undergo less oversight and scrutiny by FSANZ - there needs to be an assumption that some things will be incorrectly classified as low risk and will therefore undergo a less rigorous approach resulting in negative outcomes for consumers/governments - costs to consumers/governments as a result should be in the Cost Benefit Analysis.

- Standard Reviews

There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Option 2 assumes an increase in the number of standard reviews – from currently zero/year to 8/year – there is no clear rationale for the basis for this assumption nor any reform options to ensure this is the case. Given this limited information we do not support this assumption.

In relation to Industry costs and benefits:

- The Cost Benefit Analysis notes the following as cost to industry under Option 2: 'Removing paid applications may mean that industry can no longer reliably predict when they may take a product to market. This could increase costs associated with product development, inventory management, and marketing campaigns. An unpredictable timeline might also deter potential international food companies from operating in Australia' We note the following in relation to this cost:

- Industry and international foods companies will still be able to reliably predict when they may take a product to the market as timeframes for applications will remain, they will simply no longer be able to expedite the process. Any associated costs with product development, inventory management and marketing campaigns can be adequately managed as this is a known timeframe. As such this should not be considered a cost to industry.

- Conversely, an unpredictable timeline for proposals has not been included as a cost to consumers and governments under Options 1 and 2 and should be.

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost 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:

The IA presents two options as available for consideration – Option 1 being to 'retain the status quo' with no changes to the Act or to FSANZ's operations, and Option 2 being to 'modernise regulatory settings' by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.

- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

- Policy Problem 1

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of

the IA. We refer to our response in Part 3 above and note that we support a negative impact rating of 3 (high) for policy problem 1. We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar. Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 3 - majority resolution - for solving Policy Problem 1. We would argue that the rating should be 0 (not-at-all) or 1(low) at best.
— Sub-problem 1, Policy Problem 1

Option1: Option 1 could address Policy Problem 1- the confusion about how FSANZ should consider short-and long-term risks to health when developing food standards is one that sits with stakeholders not FSANZ itself - the FSANZ Board have confirmed FSANZ role in long-term health risks. FSANZ simply needs to communicate this better and has the ability to do so under Option 1. As such this sub-problem has no negative impact.

Option 2: As above. Whilst the inclusion of a definition may address the unclear definition issue of this sub-component the more important element of this sub-component is 'how' FSANZ should consider short- and long-term risks to health when developing standards. There has been no attempt in Option 2 to include mechanisms for how FSANZ is to do this nor to separate out how FSANZ considers these risks. We would consider there is no resolution of this element of the policy problem.

— Sub-problem 2, Policy Problem 1

The solution presented in the IA for the confusion about the factors to which FSANZ has given regard in its decision making is simply communication - this is equally available to FSANZ under Options 1 and 2 and therefore each option should have an equal rating for this sub-problem. There is no resolution of this policy problem under each option as no reforms are proposed.

— Sub-problem 3, Policy Problem 1

The proposed changes merely add language into the Act in relation to First Nations and Māori Peoples, much like language already exists in relation to 'public health' and we do not consider that sufficient and genuine engagement and consultation has been conducted with First Nations and Māori Peoples to ensure that these changes are in the best interests of those groups. These words do not in and of themselves result in commitment of government to First Nations and Māori Peoples, and respect for their culture and knowledge. We would consider this a minimal resolution of this policy problem, if any. Acting on the Tier 2 and Tier 3 solutions would make a meaningful difference and we strongly suggest these are included at this stage of the reforms.

• Policy Problem 2

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

— Sub-problem 2 - we do not consider that Option 2 provides any reforms that actually remove barriers for Indigenous foods to be brought to market, it simply is the creation of a list of 'safe' traditional foods. These foods don't need any interaction with the novel foods provisions of the Food Standards Code and therefore the relevant importance and impact is limited. As such there is no resolution of this sub-problem in Option 2 and that ratings given to Options 1 and 2 should be the same.

— Sub-problem 3 - Option 2 does not 'require' FSANZ to do any holistic reviews at all so there is no resolution of this sub-problem. Increased resourcing under Option 1 could equally have the same impact on holistic reviews and Options 1 and 2 should therefore be rated the same.

— Sub-problem 4 - FSANZ already has the capacity to develop guidelines and Codes of Practice and as there is no suggestion that FSANZ is required to do these under Option 2 it provides no more resolution of this policy problem than Option 1. As such Options 1 and 2 should be rated the same.

• Policy problem 3

We do not agree that Option 2 significantly resolves this Policy Problem and the ratings for Option 1 and Option 2 should be similar.

Option 1 is given a rating of 0 (not at all) for solving Policy Problem 1 – we argue this could be 1 (low) given many of the reforms proposed for Option 2 are equally available under the status quo.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should be 1.5-2 (moderate).

— Sub-problem 1 - whilst the addition of additional skills will benefit FSANZ, open market nominations would not result in better, more efficient, effective decision making and we would therefore not rate this sub-problem as completely resolved.

— Sub-problem 2 - decreases in funding could be resolved under both Options by changes to substantive funding arrangements to FSANZ. Under Option 2 cost recovery mechanisms could be used to address some of the deficit, this could partially resolve this sub-problem.

• Policy problem 4

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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented; it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.

Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.

Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.

Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We ask that this is reassessed according to our recommendations below.

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm. As such each of the following risks should have lower consequence ratings:

- Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.
- FSANZ's organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk
- Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work
- Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.
- 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
- Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
- An industry-wide levy could contribute to regulatory capture
- Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ. We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

• Theme: purpose and objectives

— Option 1

› Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

› Identified risk: The FSANZ Act remains out of step with contemporary expectations and obligations to recognise Indigenous culture and expertise.

Consequences and likelihood are actually both minimal (3), given the limited engagement with the Act by stakeholders and the public. Terminology in the Food Standards Code could be updated to recognise Indigenous culture and expertise through routine Code management at any time. Nothing proposed under Option 2 will address this.

— Option 2

› Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

› Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are significantly worse amongst First Nations and Māori people.

• Theme: reformed standard-setting

— Option 1

› Identified risk: FSANZ's organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk

We do not support the risk rating of major for this risk (see summary above) and recommend this is rated 2 (moderate). We support that the likelihood rating but note that the risk of this continuing under Option 2 remains high as it is not resolved by any of the reforms presented in the IA as there are no mechanisms proposed to ensure the FSANZ better uses its expertise.

› Identified risk: Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work

We disagree that the consequence is high given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. The consequence and likelihood should therefore be rated as minimal/unlikely (3). This risk is not addressed in Option 2.

› Identified risk: Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.

No evidence has been presented that international food companies are choosing not to enter the Australian and New Zealand market due to regulatory burden. Overwhelmingly products do not need to lodge applications to be introduced into this market so any impact of international food companies not entering the market as a result of this is limited in any event. Consequences and likelihood should both be rated minimal (3). Other hypothesised impacts noted are extremely speculative and not supported by evidence.

— Option 2

› Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

› 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

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

› 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

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

› Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed

We support the risk rating for this risk.

• Theme: efficient and effective operations

— Option 1

› Identified risk: Nomination and appointment processes would continue to be relatively laborious endeavours and perpetuate the risk that the Board will not have the necessary skills to provide effective governance

We disagree that the consequence of this is moderate (2), it is minor (3). It is also not very likely (rating 3 rather than current 1) given current scope and flexibility for appointments.

› 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

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

— Option 2

› Identified risk: The Board could be less efficient and well equipped to consider sectoral interests under new nomination arrangements

We support the risk rating for this risk.

› Identified risk: Expanded cost recovery mechanisms borne by industry could create new barriers to entry for businesses seeking to vary food standards, reducing accessibility of the scheme

Cost recovery methods do not inhibit engagement with FSANZ. We note the Cost Benefit Analysis analysis assumes any costs would be passed on to consumers, as such the consequence of this should be low (3 not 2) and the likelihood unlikely (3 not 2). Overwhelmingly products do not need to lodge applications to be introduced into the Australian and New Zealand market so any impact of cost recovery mechanisms linked to applications is limited in any event.

› Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed
We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations hence the likelihood of this risk is unlikely (3). Furthermore, the food industry is a multi-billion dollar industry, capable of absorbing costs, compared with a publicly-funded healthcare sector which is overwhelmed and underfunded. The priority needs to clearly be in favour of protecting public health.

› Identified risk: An industry-wide levy could contribute to regulatory capture

Any cost recovery mechanism risks regulatory capture, not just a levy, so this is a risk for all cost recovery mechanisms proposed in the IA. Cost recovery mechanisms that expedite applications (as under Option 1) are much more risky, as are paid applications as a whole (as under Option 2) as this only benefits large organisations who can afford to regularly participate in the application process. As such, the consequence and likelihood of this reform should be considered as moderate (2) at most.

› Identified risk: Imposing a food recall coordination levy could increase the risk of non-engagement with FSANZ by jurisdictional enforcement agencies, resulting in less well managed foodborne risks

We do not agree that the consequence of this is major and this risk should be rated (2-3), food recall is currently managed more than adequately and any indication that there is a serious widespread incident will be acted on immediately. We also think this risk is unlikely (3) as no jurisdiction will allow harm to come to people, industry and government from inaction.

• Theme: improving system agility

— Option 1

› Identified risk: Efforts to align policy and regulatory work across the system will continue to be frustrated

We support the rating for this risk but note that all reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. The likelihood for stakeholder confusion only remains high if FSANZ and FMM/FRSC continue to not communicate priorities and needs effectively.

› Identified risk: Inconsistencies in interpretation and enforcement will continue to be an issue, particularly for Australian businesses and enforcement agencies, generating undue regulatory burden

Consequences and likelihood demonstrably minor given cross-country penetration of products/companies and necessary jurisdictional-based approach to enforcement. We note that reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. We propose ratings of consequence (3), likelihood (2).

— Option 2

› Identified risk: Greater collaboration across the system could put at risk FSANZ's independence, if not done well

Collaboration across the system is already being undertaken with adequate checks and balances. The reforms proposed under Option 2 are available to FSANZ under Option 1. As such we suggest a likelihood rating of 1 as this collaboration is sure to continue.

› Identified risk: Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The consequence of this would not be dissimilar to current arrangements and we suggest a rating of 3. This is very likely however and should have a likelihood rating of 1 - this has been demonstrated by slow progress on combining jurisdictional databases and slow uptake of Branded Food Database and HSR 5-year review.

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:

We note our responses to previous questions and the numerous failings in considerations of each of the options and suggest that each of these is captured in future evaluation.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Food for Health Alliance remains concerned that the proposed reforms under the FSANZ Act Review do not require or enable FSANZ to meet its primary objectives of protecting public health, including long-term health and preventable diet-related disease, and providing adequate information to enable consumers to make informed choices. We strongly urge decision makers to act on the public health community's feedback, as set out in the ten recommendations below, to ensure that reforms implemented as part of the FSANZ Act Review support the health and wellbeing of Australians and New Zealanders.

We know that the food regulatory system effectively protects Australians and New Zealanders from short term food borne illness and enables industry to prosper. The IA acknowledges this, saying in the Executive Summary that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity". This review should aim to build on these strengths by identifying reforms that will require and enable FSANZ to better address failings in the food regulatory system, with a focus on where FSANZ is not meeting its key objectives. The most significant failing is that FSANZ is not effectively meeting its primary objective to protect Australians and New Zealanders from long-term health impacts and preventable diet-related diseases. Enabling FSANZ to meet this primary objective should be the driving force behind all reform options. This review should ensure that FSANZ makes a positive contribution to improving diets and reducing preventable diet-related disease, thereby effectively protecting long-term public health into the future.

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that the FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as

part of the broader work in relation to the joint food regulatory system.

FSANZ's role in the food supply

FSANZ has a significant role in shaping and improving the food supply. The potential impact of FSANZ making full impact assessments that adequately explore public health effects of food standards on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not.

Despite noting that the Food Standards Code 'provides ... standards that cover the entire supply chain from 'paddock to plate', the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one part of the food regulatory system that influences this, but it is an important one. This once in 30-year opportunity to strengthen FSANZ's role in improving the food supply and the resulting public health outcomes must be taken.

When combined, the impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. We note further that the IA sets out clearly that the Act is designed to:

- protect the public good by reducing foodborne illness and promoting population health: The reforms in Option 2 of the IA do not enable FSANZ to protect the public good by promoting population health.
- address negative externalities, such as where the actions of some stakeholder groups create costs or harm for other people, with these costs being paid for by the responsible parties: The reforms in Option 2 will perpetuate the negative externalities created by industry and resulting in costs and harms to consumers and governments - these costs will continue to be paid for by consumers and governments and not industry under the proposed reforms.
- address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production: The reforms in Option 2 of the IA do not enable FSANZ to address information asymmetries any better than under Option 1.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, FSANZ's role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and in our view the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Determination of best option is flawed

We strongly disagree with the conclusion in Section 8 of the Impact Analysis that Option 2 performs best against the three criteria used to assess the strengths and limitations of each option and is the best option for implementation.

There are fundamental flaws in the assessment of each of the criteria. We include a brief summary of our concerns in relation to each criterion here, for further details please see the detailed responses to the survey questions:

1. Extent to which each option and its components solves policy problems

We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness and that industry prospers, this is acknowledged in the Executive Summary of the IA which states that "The joint Australia-New-Zealand food standards system has an excellent reputation for safety, which also underpins the industry's economic prosperity". Given this, the main purpose of this review should be to address how FSANZ, as a key player in the food regulatory system, can address the failings of the food regulatory system.

The main concern with the current system is that consumers are not effectively protected from long-term health impacts and preventable diet-related diseases. This is the primary objective of FSANZ, however is not mentioned in the IA at all and as a result the methodology completely fails to factor this in.

We have significant concerns with the policy problems presented and the options proposed to address them. We do not agree with the approach to rating sub-problems and recommend that sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. In our view, sub-problems that impact on a very small number of businesses or relate to food safety risks which are currently extremely well managed, suggesting less need for reform, should receive the lowest impact ratings. The ratings allocated in the IA do not reflect this approach (see our responses to survey questions on Section 3 and 8 of the IA for further detail).

2. Degree to which delivery risks can be managed

The IA summarises that Option 1 was deemed on average much riskier than Option 2; we disagree.

The IA states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of major. We strongly support these ratings. However, we do not consider any other risks identified are as consequential and such, no other identified risks should receive a rating of major as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ. See our responses to survey questions on Section 8 of the IA for further details.

3. Costs and Benefits

We do not support the current cost-benefit analysis and consider it fundamentally flawed. We note that the outcomes of cost benefit analyses are likely to be influential to stakeholder groups, particularly decision-makers. However, we have considerable concerns with the inclusions/exclusions, inputs and assumptions feeding into the current cost benefit analysis, as well as the framing and presentation of results. Given this, as well as our feedback on proposed reform components, we do not consider that the outcomes of or conclusions drawn from the cost benefit analysis, as presented in the IA, can reliably be presented to decision-makers.

The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised and an assessment of the costs and benefits set out in the analysis clearly shows that the primary beneficiary of reforms proposed under Option 2 is industry stakeholders.

We note that the combined impact of the proposals as currently stated in the IA is to significantly increase costs for governments and consumers for no to relatively little benefit to those stakeholders, respectively, while halving costs and greatly increasing benefits for the food industry.

According to Table 14 and 16 in the IA:

- FSANZ will see an increase ~\$35m (+27%) in costs and an increase ~\$112m (+503%) in benefits between Option 1 and Option 2. Cost Benefit Ratio increases 0.17 to 0.80 (4.8 fold increase).
- Other governments will see an increase ~\$44m (+291%) in costs (no benefits noted for other governments under either option and therefore a Cost Benefit Ratio cannot be calculated).
- Industry will see a decrease ~\$35m (-54%) in costs and benefits of ~\$116m (from no benefits under Option 1). Cost Benefit Ratio for Option 2 noted as 3.97.
- Consumers will see an increase ~\$68m (+944%) in costs and an increase ~\$83m (+40%) in benefits between Option 1 and Option 2. Cost Benefit Ratio decreases 28.64 to 3.84 (7.5 fold decrease).

We note that these costs and benefits are entirely predicated on the current inclusions/exclusions, inputs and assumptions. As noted in our detailed comments in the Appendix, we disagree with many of the inclusions/exclusions, inputs and assumptions, most particularly in relation to the absence of consideration of the health and health care system costs under each Option.

We note also that the Australian Government Guide to Regulatory Impact Analysis (2020) requires that data sources and methods used to calculate regulatory compliance burden are transparent, that any gaps or limitations in the data are discussed, and that assumptions are disclosed.

Options for reform

We do not agree that Options 1 and 2 should be considered two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms.

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations (which is clearly a non-option), and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses to the survey will reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

Where problems highlighted under the status quo could be addressed without making significant legislative and operational reforms, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding

proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Inclusion of sustainability in the act

To achieve FSANZ's purpose of protecting long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable, and secure.

There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Introducing a provision in Section 18(2), would give clear responsibility to FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

Yes. Some parts of the submissions are confidential

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Name and contact information.

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:06:13

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Professor Jacqueline Bowden

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
National Centre for Education and Training on Addiction (NCETA)

Which sector do you represent?

Public Health

Other: :

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:

A primary objective of FSANZ is to ensure effective protection for consumers against long-term health impacts and preventable diet-related diseases. However, this hasn't been adequately addressed in the Impact Analysis. The Impact Analysis has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. This is necessary, but insufficient to adequately address how FSANZ can effectively tackle long-term health impacts and preventable diet-related diseases. We advocate for the inclusion of a Modified Public Health Test (as outlined under component 2.1 of our response) in the Act to ensure the effective functioning of the food regulatory system.

In addition, we note that the Impact Analysis presents two options as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. For example, there is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

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 below sub-problems with the most significant impact on the health and wellbeing of Australians and New Zealanders should be prioritised:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We disagree with allocating high impact ratings to sub-problems affecting a small number of businesses or well-managed food safety risks, as proposed in the Impact Analysis. The below sub-problems don't match the magnitude of risks to long-term health so should not have equivalent or higher impact ratings than sub-problems dealing with long-term impacts:

- Policy Problem 2, sub-problem 1: Statutory processes are rules-based rather than outcomes based
- Policy Problem 4, sub-problem 3: Inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending sections 3 and 18 of the Act to define public health and safety could clarify FSANZ's role in addressing long-term health risks, including diet-related diseases. However, this alone may not substantially change FSANZ's approach, as its role in safeguarding long-term health is already established in a Ministerial Policy Statement and supported by both Ministers and the FSANZ Board. We propose including explanation of how FSANZ's approach may address protecting public health and safety.

To ensure effective consideration of long-term health risks, we recommend incorporating a Modified Public Health Test into the Act (as outlined under component 2.1 of our response). Additionally, we advocate for improved communication from FSANZ to stakeholders regarding its assessment of both short-term and long-term risks. We support amending section 3 to define 'protecting public health and safety' comprehensively and aligning section 18 with this definition. We endorse utilising the Ministerial Policy Statement's definition, with an amendment to encompass both acute and long-term health concerns, including preventable diet-related diseases.

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 proposed amendment to include a definition of public health in the Act merely formalises existing requirements outlined in the Ministerial Policy Statement, without changing FSANZ's obligation to consider long-term health. The inclusion of the definition aims to clarify FSANZ's role for external stakeholders. We recommend amending the Act to include a definition of public health consistent with the Ministerial Policy Statement, with the addition of diet-related risk factors, for clarity, but FSANZ's role in safeguarding long-term health is already established.

Regarding the Cost Benefit Analysis associated with this reform, we disagree that confirming FSANZ's legislated role in mitigating public health risks should be considered a cost, as this role is already established. We recommend removing this qualification from the Cost Benefit Analysis.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

The Ministerial Policy Guidelines already undergo industry assessments during their development, so there is no need for FSANZ to repeat this process when making its own decisions. We recommend amending section 18(2) of the Act to prioritise compliance with Ministerial Policy Guidelines. Other factors listed in section 18(2)(a)-(d) should only be considered once compliance with Ministerial Policy Guidelines is ensured. Compliance should be documented in a report which should be made publicly available on FSANZ's website. This aligns with Best Practice Element 1 from the Impact Analysis, ensuring clarity and consistency in FSANZ's objectives. Therefore, we recommend amending the Act to prioritise Ministerial Guidelines over other factors when making decisions.

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:

We strongly support greater recognition of Indigenous food expertise in the Act, emphasising collaboration with Indigenous-led organisations. Adequate consultation with First Nations and Māori people is vital for changes in the Act to reflect their culture and health needs. We recommend prioritising specific consultation with First Nations and Māori people and experts to ensure the Act incorporates Indigenous culture and expertise.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

The clarification of the definition of public health, as discussed in the Impact Analysis, is not likely to bridge the gap between the Act's objectives and its practical implementation in food standards. While ministerial policy statements and decisions provide substantial policy development, it is our view that the Act lacks clear guidance on achieving public health outcomes through food standards.

Introducing a definition must be accompanied by further guidance on its implementation within food standards, ensuring consideration of long-term public health outcomes across FSANZ operations. Therefore, we strongly recommend amending the Act to establish a set of considerations for FSANZ to prioritise and make decisions on proposals, applications, or standard reviews. These considerations aim to provide clear expectations on assessing public health benefits and risks in developing, reviewing, updating, and adopting food standards.

We support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below:

The Modified Public Health Test

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply.

[3] for example added sugars 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?

No

Free text box, no character limit:

We cannot support the risk-based framework as the Impact Analysis lacks sufficient details about its implementation. We require clear explanations on its application, decision-making processes, and appeals mechanisms to be able to assess its risks and benefits. The current information provided suggests an unequal approach favouring industry decisions as 'low risk' and public health decisions as 'high risk,' potentially expediting commercial decisions without public scrutiny, while slowing down public health decisions and opening them to the influence of commercially driven submissions from industry. This could worsen disparities in decision-making under the Act, impacting both timing and outcomes of those decisions. We're concerned this approach could harm public health, especially considering the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. We advocate for a separate consultation on the risk-based framework to address these concerns.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

We recommend that the Modified Public Health Test (as outlined under component 2.1 of our response) is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The Impact Analysis provides limited information about the risk-based framework. We think there are both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty.

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:

As the Impact Analysis lacks assurance on proper assessment of public health considerations, it is unclear whether accepting risk assessments from international jurisdictions would raise standards to meet the best public health outcomes. Harmonisation of food standards with international standards should only occur if they pass the Modified Public Health Test (as outlined under component 2.1 of our response), ensuring alignment with public health objectives. The bias towards classifying industry decisions as 'low risk' and public health decisions as 'high risk' may exclude public health considerations from this pathway. While some international evidence may lead to better public health outcomes, there seems to be no intention to accept risk assessments for broad public health measures. Hence, we support the adoption of determinations from non-conflicted bodies like the World Health Organization for public health measures, as mentioned in the Impact Analysis.

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 with international standards should prioritise raising standards to achieve the best outcomes for public health and consumers, rather than lowering them. Therefore, standards should only align with international ones if they pass the Modified Public Health Test (as outlined under component 2.1 of our response).
- The proposed approach in the Impact Analysis risks favouring commercial decisions over public health considerations, as it may exclude public health decisions from potential pathways to amend food standards.
- The practical implementation of this approach remains unclear, particularly regarding FSANZ's process of "automatically" recognising standards. A harmonisation program should be developed and consulted on, specifying what standards should be harmonised and why, with consideration of the Modified Public Health Test (as outlined under component 2.1 of our response).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

The Impact Analysis does not adequately demonstrate how new pathways would encompass broader public health measures, raising concerns about potentially prioritising commercial interests over public health considerations. The assumptions made in Appendix D suggest that public health decisions would be automatically classified as 'high risk' without mechanisms to ensure resource allocation for public health proposals further exacerbates this issue.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

No

Free text box, no character limit:

New pathways to amend food standards may not apply to public health measures, potentially prioritising commercially driven decisions that increase the availability of unhealthy foods and beverages. Opportunities exist to enhance public health by expediting public health measures and mitigating risks associated with removing public consultation for commercially driven decisions through the use of a Modified Public Health Test (as outlined under component 2.1 of our response). We suggest introducing statutory timeframes for proposals to ensure timely processing.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The proposed risk framework (under component 2.2.1) for decision delegation should incorporate the Modified Public Health Test (as outlined under component 2.1 of our response) to assess risk levels. It's important to include specific questions about risk allocation for decision-making delegation in consultations on the risk framework. Any new decision-making process should undergo review after a period of operation.

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:

Delegating low-risk decisions, following proper consultation and accurate risk assessment with the Modified Public Health Test (as outlined under component 2.1 of our response), can streamline decision-making and reduce delays. Current processes should still be followed for decisions that are not low risk. However, there is insufficient information about the risk framework to determine how streamlining might affect public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Prefer not to respond / I don't know

Free text box, no character limit:

FSANZ should conduct targeted consultations with First Nations and Māori people and experts to understand their needs and preferences regarding the food regulatory system. Without meaningful consultation, there's a risk of commercialisation and potential exploitation of traditional foods by non-Indigenous groups.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities, or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food 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:

We advocate for the implementation of the Modified Public Health Test (as outlined under component 2.1 of our response) to determine which reviews are undertaken and how they are prioritised. It is important to note that additional resourcing can be achieved without the need for extensive legislative changes, as outlined in Option 1.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

- Clear criteria should be established for conducting standard reviews, including both vertical (e.g., alcoholic beverages) and horizontal (e.g., sugar labelling) standards, to align with FSANZ's primary objectives.
- We recommend amending the Act to include statutory timeframes for standard reviews. We suggest a timeframe of 3 years from "decision to prepare" to "notification to Food Minister's Meeting" is proposed, with a potential one-year extension for exceptional cases.
- The Impact Analysis suggests Option 2 could lead to up to 8 standard reviews per year, but there is no mechanism or framework outlined to ensure this or justify FSANZ's capacity from a time and resource perspective.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have been shown to be ineffective, unenforced and pose risks to public safety, health and confidence in the food system and we do not support this.

Please see:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

- Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

The Impact Analysis does not guarantee more proposals or faster processing times. We recommend amending the Act to include statutory timeframes for proposals. Currently, proposals take an average of 3.5 years, and we propose a clear timeframe of 3 years with a possible one-year extension for exceptional cases.

Option 2 of Section 6, continuing with the delivery of 3 proposals per year, seems feasible, provided proposals are considered within a stipulated timeframe, allowing for thorough consultation and decision-making. However, it's crucial to ensure that any efficiencies gained do not compromise resources for public health proposals. Balancing efficiency with public health priorities is essential for the effectiveness of FSANZ's regulatory framework.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills to the FSANZ Board composition that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills, we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary

governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We oppose changing the current nomination process to an open market one. We do not support any decision that may reduce the number of public health positions on the Board. An open market process could potentially reduce both the quantity and quality of public health nominees, especially without clear details on how it would be implemented. Keeping the nomination process within public health organisations can prevent former industry representatives with health backgrounds from qualifying, thereby managing conflicts of interest effectively.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a risk of regulatory capture.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

No

How would this need to be implemented to be successful?

Free text box, no character limit:

We endorse FSANZ collaborating with Food Ministers to establish a shared agenda and strategic direction for the food regulatory system. However, we note that this already occurs. FSANZ attends the Food Minister's Meeting, where discussions on workload and priorities take place as a standing agenda item. This existing mechanism is readily accessible to FSANZ under Option 1, meaning additional changes are unnecessary.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

The Modified Public Health Test (as outlined under component 2.1 of our response) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Priority setting between FSANZ and the Food Minister's Meeting is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

No

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. Hence, these mechanisms are already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and Food Minister's Meeting to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

We support this and request that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in 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 broader burden of disease.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support amending the Act to ensure proper consultation with First Nations and Māori peoples, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. There are insufficiencies in current consultation efforts. We propose a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies, particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

As outlined in the Impact Analysis, two options are presented as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. There is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both.

The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this. The Cost Benefit Analysis must provide a more comprehensive breakdown of costs and benefits, considering impacts on industry, consumers, and governments separately for each type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and

benefits to consumers from proposals and costs and benefits to consumers from standards reviews). These impacts should not be treated uniformly, given their varying significance. Additionally, the definition of 'public health benefits' must be clarified, specifically whether it refers to reductions in non-communicable disease rates, reduced body mass index, based on dietary patterns or a mixture of these. Distinctions between definitions of short-term (primarily safety) public health benefits and long-term (chronic disease) public health benefits should be set out. Additionally, health, healthcare system and associated social and economic impacts should be quantified clearly for both costs and benefits for both consumers and governments.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We find it unreasonable for delayed profits to a for profit industry to be considered at an equivalent level to the real health system costs borne by governments and consumers.

It is essential to clarify if industry costs presented in the Cost Benefit Analysis represent lost potential costs or lost real costs. Additionally, the delay costs to industry specified in the analysis are based on industry-provided data. We recommend using independent economic data applied to real world figures to ensure transparency and compliance with regulatory analysis standards.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

The Cost Benefit Analysis should include costs and benefits for all impacted stakeholders (industry, consumers, and governments) for each type of FSANZ work separately. It should also specify what is meant by public health benefits, and separate out short-term and long-term public health benefits. Health, healthcare system, and associated social and economic impacts should be 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 is available across 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. We recommend a significant effort be dedicated 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:

We disagree that Option 2 is more cost-effective in delivering public health benefits than Option 1, as there is insufficient detail to determine what these benefits are. The analysis has not considered the burden of disease, and the assumption that all applications, standard reviews and proposals only lead to public health benefits is not appropriate. The impact of reform options on costs of poor health to the healthcare system and consumers should be

modelled.

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 Impact Analysis presents two options as available for consideration. Presenting Options 1 and 2 as distinctly different may overlook potential solutions that don't require extensive legislative reform. There is considerable overlap between the two options presented and many policy problems can be addressed in Option 1 without undertaking substantial legislative and operational reform. We suggest a more balanced approach that acknowledges overlap between the options and considers reform elements available under both. We also note that many of the reforms proposed under Option 2 are already accessible to FSANZ, suggesting that they should not be credited as advantages unique to Option 2. This highlights the need for a more nuanced evaluation that considers the overlap between the options and accurately assesses the impact of each reform element.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

No

Free text box, no character limit:

Bundling reform components into themes does not enable accurate assessment of risks associated with each component, as not all may be implemented, necessitating a separate evaluation of each. It is essential to delineate between confusion surrounding the public health objective and poor risk management related to long-term health, treating them as distinct risks rather than conflating them. The risk-framework and new pathways have implications for both short-term (food safety) and long-term (chronic-disease) health outcomes, requiring separate assessments for each. The absence of mandated resources allocated to proposals and standard reviews, such as legislated timeframes, poses a risk as it may not ensure FSANZ resources are utilised for these purposes, a factor seemingly overlooked in the risk assessment process.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

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:

The Impact Analysis acknowledges the inadequacy of resources allocated to FSANZ to fulfill its existing legislative obligations and potential new responsibilities stemming from proposed reforms. However, it fails to accurately represent the feedback of public health and consumer organisations in previous consultations, particularly concerning the potential impact of reform options on FSANZ's ability to safeguard public health and support informed consumer 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:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:10:23

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Food Safety Standards and Regulation

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Queensland Department of Health (AWAITING CLEARANCE)

Which sector do you represent?

Government

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::
[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:

An overall impact rating for each sub-problem has been calculated by combining a rating out of three for the level of impact and the extent of impact of the problem. While the report gives broad descriptors for each rating of impact, it does not indicate how these were determined for each sub-problem.

In the previous draft Regulation Impact Statement, consideration of costs and impacts of various problems and their solutions was almost exclusively focused on industry, with little consideration of public health impacts or benefits, which can ultimately lead to cost savings to the health system. It will be important to see an assessment of the public health impacts for each component, with consideration of the overall net effect on the protection of public health and safety. Proper and due consideration must be given to the assessment of long-term public health impacts for each component. This is a significant oversight and should be given the priority it deserves, especially given the priority objective of the food regulatory system is 'to protect public health and safety', with other objectives being listed in descending order of priority.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

No comment

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:

Certain sub-problems listed under each of the four Policy Problems do not adequately capture the issues raised in earlier sections of the document. The implications are that the reforms may not adequately address the problems that have been identified. For example:

Policy Problem 1: The purpose and objectives of FSANZ are not clear

Sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures

Unclear definitions about FSANZ's need to consider short- and long-term risks to health are not the issue and have not been an issue since 2013 when the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures clearly defined FSANZ's role. This was reaffirmed by the Food Ministers' Meeting (FMM) in 2022.

Rather, the confusion highlighted in Policy Problem 1 relates to the inadequate reflection of the primary objective to protect public health and safety throughout the Act and FSANZ's functions, including in decision-making. Inadequate funding of FSANZ to perform its functions has been a contributing factor.

Including a definition of 'protection of public health and safety' in the FSANZ Act might be a useful first step. However, it will not address how this objective is implemented by FSANZ. The described friction around the extent to which standards should be used to just establish a safe food supply, vs underpinning a food system that promotes a safe and healthy food supply, fails to consider that a healthy food supply and a safe food supply are inextricably linked. For example, toxins or chemicals found in food, such as aflatoxin from mould, acrylamide from baking processes, or excess levels of certain additives can contribute to chronic diseases such as cancer. Other food characteristics or components can contribute to obesity, which also contributes to cancer. Therefore, these health and safety issues should not be considered distinct from each other.

To adequately address Sub-problem 1, the sub-problem could be better described as: Unclear definitions of protection of public health and safety, and inadequate reflection of these throughout the Act and FSANZ's functions, have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures. This should be rated 3 for both level and extent of impact.

Sub-problem 2 | There remains some confusion about the factors to which FSANZ has given regard in its decision-making, and how this aligns with the objectives of the Act

This issue extends beyond confusion and relates to sub-problem 1, where FSANZ's decision-making processes need to better reflect the Act's primary objective of protection of public health and safety. NOUS raises the example of factors under Section 18(2) that are considered with equal weighting, including Ministerial Policy Guidelines and ensuring a competitive food industry. NOUS indicates that there is confusion regarding the extent to which FSANZ must 'have regard to' Ministerial Policy Guidelines. Almost all these guidelines been developed for instances where it has been recognised that special consideration needs to be given to protecting health and safety for certain products, labelling or in certain situations. This ties the guidelines directly to FSANZ's primary objective in developing food regulatory measures. These guidelines have been subject to formal regulatory impact processes, which consider industry impact, and failure to adequately meet the guideline is grounds for the FMM to request a review of a proposed change to the Food Standards Code. For FSANZ to consider health-related Ministerial Policy Guidelines with equal weighting to industry factors is problematic and conflicts with the overarching purpose and objectives of the Act. To ensure the protection of public health and safety is reflected in decision-making, the Act should acknowledge that where Ministerial Policy Guidelines directly support this primary objective, a corresponding weighting to them will be applied.

NOUS also makes the point that tensions arise when Ministerial guidelines are at odds with the desirability of an efficient and internationally competitive food industry and provides infant formula as an example. NOUS states the challenges in progressing changes to infant formula have been due to political tensions over the merits of infant formula vs breastfeeding. These have been due to applications not adequately considering or addressing the risk of new ingredients for infants. Infants are vulnerable and often dependent on formula as the sole source of nutrition during a unique period when food consumed significantly impacts both short- and long-term health and developmental outcomes. The Ministerial Policy Guideline on infant formula was developed as Ministers recognised the greater level of risk to be managed with infants (and felt this was not being adequately considered by FSANZ). Therefore, the regulatory framework for infant formula should be commensurate with this level of risk. Confusion over the weighting of the Ministerial Policy Guidelines against industry factors has led some to believe applying the greater level of risk management outlined in the guideline was not necessary, while others expected the guideline principles to be considered as part of the primary objective to protect public health and safety. It should also be noted that this applies to the example given later for FSANZ Application A1155 (addition of an oligosaccharide to infant formula) that NOUS indicates was delayed despite being 'fully approved in several comparable foreign jurisdictions'. Most of the other jurisdictions only permitted the ingredient in infant formula, at half the level being proposed, and no safety tolerance studies at the higher levels were provided. The applicant could also not demonstrate that adding the ingredient would be of benefit to infants; a principle incorporated in the infant formula Policy Guideline as an additional surrogate for safety given the influence of infant formula consumption on long-term development. If the Policy Guideline had been given greater consideration by the applicant, the delays may have been avoided.

Given the delays caused by this confusion and inadequate weighting of the Ministerial Policy Guidelines in line with the primary objective, this sub-problem should be rated 3 for both the level and extent of impact.

In terms of the relative importance of the sub-problems under Policy Problem 1, sub-problem 1 and 2 are considered to have the greatest impact, followed by sub-problem 3 (that the Act is silent on commitments to First Nations and Maori Peoples), noting the need for this to also be addressed.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

Sub-problem 2 | Long-term decreases in funding has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions

It is suggested that the overall impact should be higher than 6. Both level and extent of impact should be 3. The under-resourcing of FSANZ is cited as the key reason that holistic reviews of standards are not undertaken, and proposals, some of which have been underway for 10-20 years, are not being completed in a timely manner. This has a significant impact on the protection of public health and safety of the population. For example, the review of sports foods has been on hold for many years despite recognition of the inadequate regulation of sports foods on the market, with associated health and safety impacts. Given FSANZ is significantly underfunded compared with similar overseas jurisdictions, as outlined in the NOUS report, it is crucial this be considered a priority.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

Sub-problem 1 | The lack of a shared vision of system priorities between FSANZ and the FMM limits the effectiveness of the broader food regulatory system

The overall impact of this sub-problem is rated 4, however it should be lower. Priority setting discussions between FSANZ and the FMM are important and already occur. Much of the workload requested of FSANZ by the FMM is for the review of out-of-date standards or public health and safety issues, which should be part of FSANZ's core functions. Reducing requests from the FMM would be better addressed under Policy Problem 1.1 by ensuring the protection of public health and safety (according to the Ministerial policy definition) is reflected in FSANZ's functions, and under Policy Problem 3.2 by ensuring FSANZ is adequately funded to conduct regular reviews of out-of-date standards.

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):

The Impact Analysis written by Nous Group indicates that stakeholders are confused about the definition of public health and safety. This is despite the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures (2013) that clarifies FSANZ's role and the FSANZ Board's clarification that FSANZ's objectives are intended to make a positive contribution to longer-term public health objectives.

Thus, whilst the inclusion of a definition would be useful, on its own and without other measures to support the implementation of a definition in practice, it would be unlikely to have much impact from a public health point of view and the ability to reduce any confusion that may or may not exist is questioned. Long-term health outcomes require a multi-faceted approach which recognises the importance of influencing consumer behaviour.

Clearly defining 'protecting public health and safety' may enhance stakeholders' understanding of FSANZ's role, as well as how food standards can support public health objectives. It should be noted that FSANZ's risk assessment of applications and proposals to amend the Food Standards Code includes an assessment of food safety and short- and long-term public health effects.

The risk of having a broad definition is stakeholders may interpret this as meaning that all issues can be addressed by the Food Standards Code. If a comprehensive definition was used, there would need to be clear communication that food regulation may not be the most appropriate intervention to affect change for all food-related public health issues.

The Ministerial Policy Statement definition is the most suitable and reflects the interrelated nature of short- and long-term public health and safety. The instrument which legislates for a high standard of public health protection in the domestic food supply should encompass all food-related illness, not just short-term food safety issues. Defining 'protecting public health' may ensure that longer term health outcomes (including prevention of diet-related chronic disease and conditions) are properly considered within FSANZ's remit.

It is noted that in the Nous Group's outline of the objective of this reform work (page 42), and what a strong regulatory framework should contribute - protection of public health is noticeably absent. This highlights that a definition on its own is insufficient if the object of the Act in Section 3 (to ensure a high standard of public health protection) and the primary objective of standard setting in Section 18 (the protection of public health and safety) are not reflected further in this reform work (such as in decision making and other functions).

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?

Yes

Additional comments (optional):

Clarifying the meaning of protection of public health and safety may help reduce any role confusion. However, such clarification is unlikely to have a material impact on the approach to applications and proposals unless these objectives are reflected in other FSANZ functions, including decision-making (which includes the weighting given to Ministerial Policy Guidelines).

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Clarifying the definition of 'protection of public health and safety' within the Act may remove any doubt that FSANZ should consider public health and safety broadly from both a short- and long-term perspective, including both communicable and non-communicable food-related illness. However, as previously stated, unless the clarification of the definition is accompanied by practical change in FSANZ's functions, there is potential that it will have little impact.

In both the draft regulatory impact assessment and this Impact Assessment, the importance of retaining the protection of public health and safety as the primary objective has been highlighted. However, collectively, it appears the proposed actions to date would result in a reduction in public health and consumer protections overall. To prevent these reforms from having a net negative impact on public health and safety, both the problems and actions proposed need to reflect the protection of health and safety as the legislated primary food regulatory objective.

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:

It is noted that in the FSANZ Application Handbook, applicants are already advised to address any relevant Ministerial Policy Guidance material within their applications. In call for submission papers for applications and proposals, FSANZ also provides an assessment of how the Policy Guideline has been addressed. This indicates that there may need to be greater communication on the role of policy guidance in the process of decision-making.

Additionally, it should be considered as to whether the FSANZ Act should recognise that policy guidelines have been developed to provide specific guidance on the protection of public health and safety in relation to certain situations or foods, and thus should be incorporated as part of the prioritised primary objective, rather than something that FSANZ must 'have regard to' and in equal measure to industry factors.

It is also important to note that Ministerial Policy Guidelines have already been subject to regulatory impact assessments and their merits against industry interests have previously been assessed.

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:

It is suggested that this would need to be determined in consultation with First Nations stakeholders. Currently, dietary assessments undertaken to assess the effect on public health of a potential change to the Food Standards Code, e.g. new processing aid or higher pesticide residues, do not take into account differences in consumption patterns of the general Australian and New Zealand population and First Nations Peoples.

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:

Further consideration of relevant changes to the Act to promote recognition of First Nations culture and expertise, in consultation with relevant stakeholders would be welcome. This is particularly important because of the significant disparity between the health of First Nations peoples and other populations in Australia and significantly more work is required to close this gap.

Recognition of Indigenous cultures and food expertise could be much broader than bringing 'bush tucker' to market. It may also include for example the impacts of proposed changes to the Food Standards Code on Aboriginal and Torres Strait Islander health outcomes; it could also consider public health

issues highly relevant to Aboriginal and Torres Strait Islander peoples, such as access to healthy, affordable food in remote communities.

Consideration should also be given to including the impacts of proposed food regulatory changes on the public health of First Nations groups. Currently, traditional foods are considered by the FSANZ Advisory Committee for Novel Foods which consults local Indigenous community leaders to assess traditional use. A dedicated Indigenous Advisory Committee for Indigenous foods may be a worthwhile consideration, in addition to a list of pre-approved Indigenous foods. Further consideration of how a 'history of safe use' may be better determined for these foods is encouraged however it is suggested that any changes in this area need to be guided by these groups. It is important however that Indigenous foods are subject to the same regulatory scrutiny as any other food which is new to the market.

Further, initiatives that recognise and support First Nations People, their culture and expertise, including food-related enterprises should be supported. However, FSANZ may not be best placed to do this.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

1. Market failures, which can impact on trade as well as public health and consumer confidence, include outbreaks associated with microbiological contamination, excessive chemical residues, foreign objects in food and misleading information.

- Maintaining consumer confidence is a function of both the food regulatory system and Australian Consumer Law.
- Addressing market failures does not rest solely with governments. Good regulation prevents market failures and should be implemented in partnership with industry and other stakeholders.
- The scoping paper makes very few references to market failure. The strawberry tampering incident is an example of market failure which may have been mitigated by the implementation of a primary production and processing standard for horticulture.

2. Consideration of culturally and linguistically diverse population groups and their culture and traditions surrounding food. Whilst these groups are not Indigenous to Australia or New Zealand, they make up a significant proportion of the population in Australia.

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:

The introduction of a risk-based framework, such as the indicative one proposed, may assist in assessment of some standard setting and decision making, provided that both short- and long-term public health is considered. It will also be important to demonstrate how this would be applied to longer term public health issues (for example health claims) or situations where changes to the Food Standards Code are proposed to meet the objective regarding the provision of adequate information to enable consumers to make informed choices.

Streamlining the review of low-risk amendments (e.g. processing aids) from select international regulatory systems (e.g. Codex, USFDA) with the minimal check pathway would create efficiencies. It could allow resources of jurisdictions, FSANZ and the Food Ministers' Meeting (FMM) to be directed to higher priority proposals and issues. This may serve to ensure work in these areas can also be progressed.

However, it is important to note that a risk-based framework that is solely focused on acute food safety risk is likely to negatively impact the community if these public health issues are continuously considered low-risk and deprioritised.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

A broad approach to risk should be considered including the primary three food regulatory objectives to protect public health and safety, provide adequate information and prevent misleading or deceptive conduct, all of which are listed in descending priority order in the Act.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Negative

Free text box, no character limit:

Food regulation already operates under a risk-based framework.

However, if an alternate risk-based framework is introduced that does not consider the three priority objectives under Section 18(1), (the protection of public health and safety; provision of adequate information; and the prevention of misleading or deceptive conduct) this could result in the deprioritisation of important regulatory measures needed to address issues under these objectives.

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:

Adopting risk assessments from overseas jurisdiction and Codex has the potential for realising efficiencies for FSANZ and stakeholders in the standard setting process, promoting industry innovation and reducing data requirements for applicants. However, food standards can be used as technical barriers to trade by our trading partners, and consequently, may not always solely based on science. Applicability to the Australian/NZ situation needs to be assessed.

It is noted that this process is already possible under the current provisions of the FSANZ Act and has already occurred with Health Canada and the assessment of certain genetically modified foods. This process could support FSANZ's approach but should be subject to verification, consideration of local characteristics and assessment against relevant Ministerial Policy Guidelines. It is extremely important that any such provisions do not allow any weakening of public health protections.

Questions relating to the applicability to Australia and New Zealand include:

- Will all overseas assessments be regarded as having equivalent scientific merit or only those from selected regulators and or assessment agencies?
- What criteria should be used to benchmark overseas regulators/assessment agencies and their assessments?
- What will be done if there is divergence of scientific opinion?
- Will FSANZ evaluate overseas assessments, even those from comparable agencies?

Further, have the risk assessments incorporated Australia New Zealand-specific variables? For example, in relation to maximum residue limits of agvet chemicals and maximum limits for contaminants, dietary consumption values, such as potato consumption from an Asian country, may not reflect our diets.

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:

Australia is highly reliant on the export of agricultural commodities for its economic prosperity and has strongly contributed to international standard setting over many years. However, Australia has not had an official policy of accepting standards such as Codex. This is even though we have encouraged other countries to adopt those standards to support Australian trade. Consequently, there are good trade reasons to adopt relevant international standards.

However, there needs to be careful articulation of the implication of the adoption of Codex MRLs as limits in Australia. In Australia, compliance with food standards MRLs is only part of the regulatory regime associated with the use of agricultural and veterinary chemicals. This is not an unreasonable outcome given that there are other areas of risk that are managed by the APVMA approved instructions. However, it does require some clear articulation of the reasons for the situation.

The APVMA assesses risks to public and the environmental health and trade and sets appropriate use instructions to manage the risks. The APVMA also sets MRLs that are associated the approved uses in Australia. The adoption of Codex MRLs into the Food standards Code means that the MRLs set can be different to those in the APVMA MRL Standard. In most Australian states, agricultural producers must comply with the APVMA MRLs. Therefore, it sets up an anomalous situation that overseas producers.

While a current FSANZ function highlights the need for consistency, a key tenant of this is based on the best available scientific evidence, as well as the overarching priority of the protection of public health and safety. To uphold these two latter criteria, it is understood the intent is that it will be checked.

A mechanism to enable FSANZ to adopt international standards could have benefits for domestic food producers who export and are currently required to adhere to more than one standard (i.e. domestic and export standards).

It is considered appropriate that the introduction of such a provision would need to be clarified that international standards can be considered only where they have undergone a similar scientific and risk assessment to what would be undertaken by FSANZ during the application process.

The adoption of international standards by default may create challenges if the standard is contrary in design to those in the Food Standards Code, is over-prescriptive, does not take into account related domestic standards (both those within and outside the food regulatory system, such as environmental standards for chemical MRLs) or is not suitable for the Australian and New Zealand context, both from a public health and social policy perspective.

It is also unclear whether this would also involve automatic adoption of changes or even revocation of standards or permissions should the international jurisdiction amend these regulations. In principle the streamlining of the application process is supported, however consideration needs to be given to drafting, implementation and some rigour placed around what is an acceptable overseas standard.

Queensland continues to support a scientific and risk-based approach to standards development and therefore the automatic adoption of new standards is not supported due to:

- the limited engagement between the Commonwealth Government bodies and jurisdictions regarding international standards development processes, and
- the lack of an implementation period to enable industry, regulators and consumers to prepare for the change to the Food Standards Code.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Issues with the current application/proposal system are:

- FSANZ's technological and safety assessments of new additives and GM food/ingredients take up resources which could be better used in strategic work. This trade-off needs to be explored especially in cases where the substance has been approved for use by Codex or in other countries.
- It is time consuming for stakeholders, involving review of one or two Call for Submission papers and an Approval paper, making a submission to FSANZ when warranted, and, in the case of government stakeholders, briefing of the lead Minister on how to vote on a proposed amendment.
- Related applications about a family of substances, e.g. steviol glycosides, are considered individually, rather than as a group. Many of the elements of the safety assessment are the same for each substance.
- Technical, risk-based assessments of minor application changes should not require the need for extensive consideration. Ministers may become fatigued when considering an amendment about a processing aid sourced from a GM microorganism, both with unpronounceable names, but would be more engaged when considering policy issues, including those with a strong social policy consideration.
- Technological justification for an amendment is often not well articulated in the Call for Submissions paper and supporting document. There is an underlying policy issue as to whether any substance which is safe should be permitted in a food, or only permitted if there is a technological justification for its presence.
- The lack of statutory timeframes for proposals has resulted in significant delay, and prioritised industry applications over more strategic policy issues.
- One proposal is P1028 (Infant Formula) which commenced in 2013, and following this there have been applications (e.g. A1155) from industry seeking permission for additional substances in infant formula. There have been diverse views from stakeholders and some issues have been deemed out-of-scope for A1155. If P1028 had been progressed in a timely manner, some of these controversial or out-of-scope issues may have already been resolved.

The process could be expedited by:

- combining Call for Submissions and Approval stages for an application for a food additive or GM ingredient that has already been approved for the same use by Codex Alimentarius or regulatory agency of another country (e.g. UK Food Standards Agency, US Food and Drug Administration, European Food Safety Authority and US Food and Drug Administration, Canadian Food Inspection Agency)
- excluding applications involving food additives (includes processing aids) and GM ingredients or foods from Ministerial approval unless FSANZ's risk assessment indicated a safety or public health issue, similar to how the APVMA is able to change the Maximum Residue Limits standard of the Food Standards Code directly, without oversight of the Forum.
- Approval by the FSANZ Board would be sufficient for these types of low risk, routine technical approvals, however, some safeguards could be built in, such as the FSANZ being able to defer to the FMM on Food Regulation higher-risk matters.

It is suggested that a broadening of the application process should have been considered. This approach would allow for the pre-market approval of health claims. The Code amendment process would relieve the regulatory burden on jurisdictions as the accuracy of claims would need to be verified via a pre-market approval, prior to any regulatory oversight, rather than the self-substantiation process that does not require pre-approval. It would reduce the use of unsubstantiated claims, which may be in the marketplace for some time before regulatory action is taken. Part of the consideration of this option would be to gain an understanding of the barrier for industry when applying for Code amendments. For example, there may be concerns about cost, or timeframes, or the opportunity to protect their commercial information.

The current process prohibits a business from using a relationship that has been notified by another food business. As such, a food business wishing to make a general level health claim based on a relationship that is already on the list must undertake its own systematic review and notify FSANZ of the relationship. It is suggested this approach places burdens on regulators to continue to review and consider the merits of potentially similar food-health relationships. An underlying reasoning for this approach appears to be the protection of a business's commercial development efforts.

Whilst this is of course important for business, it may need to be reassessed whether it is the role of FSANZ or jurisdictional food regulators to be concerned about whether a business's competitor may 'springboard' as a result of the notification of food-health relationships. It is suggested business have a variety of protections under laws relating to intellectual property and obligations of confidence which could be utilised to safeguard their commercial interests.

Any consideration of the options for managing the process for notifying a food health relationship, should consider the difficulties with the removal of claims which are not able to be substantiated.

There are reservations about industry self-substantiated pathways for very low risk products. It requires FSANZ and/or jurisdictions to take on enhanced post market monitoring and surveillance roles, requiring additional resourcing, including, potentially, acquisition of specialist knowledge. With the industry self-substantiation pathway, there is a risk, albeit low, that unsafe products may be in the market for some time before regulatory action is taken.

Minimal check pathways would need to continue to deliberate on local characteristics, assessment against relevant Ministerial Policy Guidelines and ratification by government. This would ensure the ongoing separation of powers between the risk assessors and risk managers and the oversight of legislation by elected officials for each jurisdiction. Further discussion should also occur around what might be considered comparable regulatory systems, being those with independent pre-market assessment, rather than industry self-assessment or self-regulatory processes.

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 general principle of recognising categories of risk to allow FSANZ to expedite routine or low-risk amendments while focusing limited resources to carefully consider and assess high risk amendments that may have wide ranging food safety, social or economic impacts is agreed.

The triaging system used to risk rate applications/proposals should be simple and reproducible. applications involving a food additive already approved in Codex or other international food systems could automatically be categorised as low risk and triaged as a minor variation, without the need for FMM approval.

An application or proposal that aligns with a strategic priority of FSANZ should be triaged as a major variation. Amendments that have broad-ranging political, social and economic consequences are likely to be of key interest to Ministers (e.g. pregnancy warnings on alcohol) and will require their approval.

Whether rejection is an option for an application/proposal that falls outside FSANZ's area of expertise and does not align to strategic priorities should be considered.

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

FSANZ's technological and safety assessments of new additives and GM food/ingredients take up resources which could be better used in strategic work. Further it can be time consuming where briefing of the lead Minister is concerned on how to vote on the proposed amendment.

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:

No comment.

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:

It is considered that the FMM is a law-making body which is designed to create efficiencies in decision making by replacing parliamentary process in adopting food laws into members' jurisdictions. Existing processes adopted to streamline decision-making further have included the FMM making out-of-session decisions for low-risk changes to the Code. Further delegating these law-making functions to unelected officials is a significant step as it may remove Ministerial oversight. Other reforms that create efficiencies may have a more tangible effect than removing ministerial oversight as without policy guidance it may be difficult to achieve the overarching aim of protecting health and safety, both in the short-term and long-term.

Although this may be a good long-term aspiration, especially for applications where there is a strong and relevant evidence-base, the system is not mature enough yet to allow for ministerial delegation to the FSANZ board for decision-making. Ministers are advised by their own jurisdictional officers and accountable to their constituents. This independence and accountability would be lost if Minister's were to delegate to the FSANZ Board without oversight and sign-off.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

It should be considered that an issue that might be low risk for one stakeholder, may be higher risk for another. A range of factors should be considered including the level of public health and safety risk, the impact on the reputation of the domestic food supply and the level of interest to the public of the proposed change.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

FSANZ's technological and safety assessments of new additives and GM food/ingredients take up resources which could be better used in strategic work. Further it can be time consuming where briefing of the lead Minister is concerned on how to vote on the proposed amendment.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

No comment.

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?

Yes

Free text box, no character limit:

Domestic and international trade opportunities may arise for Indigenous businesses bringing traditional foods to the broader market, especially if these foods have nutritional or therapeutic benefit e.g., Kakadu plum with high vitamin C content.

Therefore, it is considered that development of a list of traditional foods or ingredients that have undergone nutritional and compositional assessments could be positive and facilitate entry of traditional foods to market. It will be important to consider that in addition to nutritional and compositional assessments, these foods and ingredients should also have undergone public health and safety assessments of their proposed use.

It is important to note that whilst this may be a useful investment of time and resources, any action should be taken in conjunction with First Nations peoples as enhanced employment and educational opportunities, e.g. new harvesting, processing, and packaging methods may be required to bring Indigenous foods to market. This in turn may create better health outcomes for Indigenous communities in terms of healthy food handling practices and also access to healthy, affordable food in remote communities.

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:

No comment.

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:

The food supply chain is constantly evolving and innovating and therefore it is imperative that strategic reviews can be conducted in a timely and succinct manner.

Following approval of a proposal or application, the Food Standards Code is redrafted to take account of the approved amendment. However, this may have unintended consequences which may only be uncovered by a strategic review, e.g. for an issue which was regarded as out of scope of the original application or proposal. It is not uncommon for FSANZ to respond to an issue raised by a stakeholder from a Call for Submission paper that it is "out of scope".

The FSANZ Act should be amended to provide the flexibility necessary to enable FSANZ to drive 'forward-looking regulation' if agreed to by all jurisdictions as part of food regulatory system deliberations. Given the significant investment now being provided by jurisdictions in the area of data collection, analysis and analytics, and the key information they likely hold, further consultation is required as part of the modernisation program. It is encouraged that the FSANZ Act will be amended to enable FSANZ to undertake reviews of food standards and 'position FSANZ as the engine of food safety

intelligence’.

However, there should still be a mechanism by which food standards can be changed, other than by strategic review or the current application/proposal system, that enables the regulatory system to respond quickly to an unanticipated problem with a food standard.

Additionally, there are a number of proposals on hold, or that have been ongoing for many years and out-of-date standards is a key problem to address in the current review. Whilst adequate resourcing is an important factor, other factors are equally important to resolve, such as the lack of legislative obligation for FSANZ to conduct regular reviews and barriers created by statutory time frames and cost recovery for applications, which results in their prioritisation over proposals.

These include:

- P1047 – Review of regulatory nutrient reference values, to update the values in the Food Standards Code from the 1991 recommended daily intakes to the 2006 Nutrient Reference Values – 14 years, put on hold until 2018 and nil action since.
- P1024 – Revision of the Regulation of Nutritive Substances & Novel Foods – 12 years, on hold since 2017 due to other priorities.
- P1028 – Infant Formula – 12 years since the first public consultation.
- P1010 – Review of Formulated Supplementary Sports Foods – 23 years. Commenced with proposal 236 in 2001, abandoned in 2013, then added back on the work plan in 2018.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

Provided there is adequate resourcing and time to enable a thorough, considered review, there could be positive impacts as it would ensure standards reflect best practice and are founded on contemporary evidence.

Other solutions to drive holistic reviews of food standards (in addition to resourcing) could include:

- Designating regular holistic reviews of standards as a primary statutory function, while also reviewing the statutory timeframes for applications.
- Creating sunset provisions for standards, or regular review timeframes that can be planned for with standardised review processes to assess whether a standard remains fit-for-purpose.
- Enabling FSANZ to be flexible in its workplan with Application timeframes to enable it to prioritise proposals or reviews of standards that reflect ministerial priorities, policies, or known regulatory issues.
- Providing FSANZ with the ability to recognise not only international risk assessments, but also work conducted within the Australia New Zealand food regulatory system (such as through the Food Regulation Standing Committee policy development process and associated Regulatory Impact Assessments).

It is important to note that automatic sunset that results in the removal of food standards without a prior careful review could result in the loss of important requirements that help protect public health and safety, prevent misleading practices and that support public health objectives. If implemented, consideration may need to be given to sunset different parts of the Code at different times because sunset the entire Code, which is very large, on one date could create a significant resourcing issue for FSANZ and all stakeholders that could result in less careful consideration of changes and contribute to mistakes.

Regular holistic reviews of food standards could provide a more tailored mechanisms for identifying and addressing inconsistencies within food standards and opportunities for more effective regulation, provided that it does not detract from other higher priority projects. These reviews should be coupled with the sunset arrangements which could be established with consideration of the linkages between standards.

Holistic reviews could be a mechanism to make certain older standards more contemporary, help remove anomalies and improve ambiguous and unclear drafting. It could also help to provide a more strategic approach where there are multiple industry applications for similar issues, such as different steviol glycosides.

Additional resourcing for FSANZ to undertake such reviews may not be necessary if the role of FSANZ is clear and changes are made to FSANZ's application processes, funding model and approach to priority setting.

A possible trigger for review of food standards could include industry and multi-jurisdictional regulatory uncertainty about an issue that is raised with FSANZ. Some reviews could be of a more strategic and proactive nature if initiated early, particularly in response to new innovations that are likely to result in a series of industry applications.

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:

Greater use of guidelines and codes of practice where these provide practical advice for industry e.g. on safety processes by FSANZ is supported in-principle. However, given these are not enforceable, these are not suitable as a replacement for standards as stand-alone instruments, particularly for labelling, or longer-term public health issues, where there can be less motivation for industry to comply.

Because they clarify how to interpret, implement, and achieve the prescribed outcome of a food standard (e.g. microbiological limit), this may reduce the number of industry enquiries and promote jurisdictional consistency when providing interpretative advice (especially beneficial for multi-jurisdictional businesses). However, such instruments need to be considered in the context of the whole regulatory system, including the potential adoption of existing industry codes or guidelines and the development of new documents by industry in consultation with regulators. Ancillary legislation within each jurisdiction may be required to give codes of practice enforceable effect as industry regulating industry does not work.

A risk-based, decision-making tool to determine whether a standard, code of practice or guideline would be required. The types of 'issues' for codes of practice and guidelines would need to be considered in the context of the modernisation work program (including the development of a regulatory delivery model) and the needs of industry, jurisdictions and consumers. Codes of practice and guidelines can provide sector-specific advice about the interpretation, implementation, and acceptable outcome of a food standard.

If industry-developed codes of practice are utilised, regulators must be confident with the monitoring and auditing arrangements and that adequate education for stakeholders is provided. Such codes could reflect industry-led QA/food safety schemes but be backed up by stronger regulatory options for those not 'in the tent' of industry schemes, or where there is reason to believe that industry schemes are not effective or effectively implemented and audited.

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:

The Code of Practice on Nutrient Claims (CoPoNC) is an old example of a Code that had no regulatory backing and was not well implemented by industry (see <https://search.informit.org/doi/abs/10.3316/ielapa.200711981>)

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:

This is not supported.

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:

Industry regulating industry does not work and has been shown not to work in a range of areas. A significant contributing factor in the success of the food regulatory system in the protection of public health and safety has been FSANZ's independence. Deferring the development of regulatory instruments such as Codes of Practice, or guidelines, to industry will create concerns about real or perceived industry capture.

Another concern is that there may be a sense of ownership of guidance developed by an industry stakeholder that raises a number of questions over governance, content approval and whether the guidance might end up being restricted to those that pay.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

No comment.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

No

Free text box, no character limit:

It is noted the recommendations are outstanding from a 2014 Review. It may be beneficial to provide stakeholders with access to this 2014 review paper to help inform the applicability of these recommendations now in 2024. It is noted the Australian Government commenced a Review of the Public Sector Board Appointment Processes in 2023 as part of the Australian Government's Public Service Reform Agenda. Any changes to the FSANZ Board should take into consideration recommendations that will result from this Review.

Amending the compositional requirements of the FSANZ Board should take into consideration additional factors such as First Nations, gender, culturally

and linguistically diverse, geographic and professional background and expertise, age and other inclusion matters.

It is important the core skills required for membership on the FSANZ Board continues to reflect the objectives of FSANZ. The additional skills listed on page 59 of the consultation paper could be considered complementary but not as a replacement to the core skills currently in section 116 of the FSANZ Act. A sufficient spread of expertise on the FSANZ Board should be maintained and consideration could be given to creating and maintaining a board skills matrix.

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:

The FSANZ Board should contain core competencies that are held by members, with core expertise that reflects FSANZ's primary objective – that is, public health and safety, and risk assessment (including microbiology, nutrition and dietary patterns, public health and toxicology).

It is noted the recommendations are outstanding from a 2014 Review. It may be beneficial to provide stakeholders with access to this 2014 review paper to help inform the applicability of these recommendations now in 2024. It is noted the Australian Government commenced a Review of the Public Sector Board Appointment Processes in 2023 as part of the Australian Government's Public Service Reform Agenda. Any changes to the FSANZ Board should take into consideration recommendations that will result from this Review.

The Food Ministers' Meeting (FMM) should be provided adequate time to consider nominees to the FSANZ Board. Consideration should be given to including requirements in the FSANZ Act to ensure there a transparent and equitable selection process for the chair and board members, which is shared in the consultation with the FMM, to ensure the chair and board members have the appropriate skills and knowledge and well suited for the functions required.

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:

The food regulatory system's resources are currently focused on individual business applications to change the Code (usually requested by larger businesses), rather than supporting system-wide improvements that have broader business benefits, particularly small to medium enterprises, and consumers. Therefore, the impact of removing expedited applications may be negative for individual businesses but positive overall for industry and the community by reducing a barrier that requires FSANZ to prioritise applications over proposals.

However, it is important that adequate cost recovery should be available to FSANZ (and other government agencies involved in the food regulation system), particularly for matters such as applications that relate more to commercial interests than public benefit functions.

Other cost-recovery options, such as charging a fee to assess self-substantiated health claims, could be explored.

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:

We have concerns with the practical implementation of an industry-wide levy and that this may have consequential effects for downstream users (for example, passing the costs onto consumers). Within the current environment of the cost-of-living crisis, there is concern that the proposed levy may exacerbate these pressures and any changes should take into consideration the ACCC Supermarkets inquiry 2024-25. It is also noted in Table 15, that the Impact Analysis expects industry to pass the levy onto consumers at an amount of \$AUD 10 million per annum. Therefore, the levy will benefit FSANZ and industry at a cost to consumers.

While an industry-wide levy would assist with the cost of the food regulatory system to FSANZ, it would need to be proportionate to the varying sizes of food businesses.

It would be beneficial to provide further information on the type of food business that would be captured by the proposed levy, noting that the proposal suggests "the largest 5,000 food businesses". For example, would the levy include only businesses that have a food business license or could it be any business that is involved in the sale of food including importers, supermarkets and petrol stations?

It is noted that the proposed levy would only apply to Australian food businesses however the revenue generated would also benefit New Zealand food businesses, yet these are not captured in the proposal or to be considered in a review of the FRA/Treaty. There is a risk that Australian food businesses captured by the levy may move their operations and/or head office to New Zealand to avoid the levy whilst still accessing the benefits of the Australian New Zealand food system.

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 levy should be proportional to the business' operations with large and multinational corporations charged significantly more than smaller corporations. However noting that the cost regardless is expected by the Impact Analysis to be passed onto consumers.

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:

No comment.

What would be the expected impact of compulsory fees for all applications?

Positive

Free text box, no character limit:

Depending on the fee amount charged, large sized and multinational corporations would be able to afford to make applications however smaller companies may not have the ability to pay and may be at a disadvantage.

Further information on this proposal would be beneficial to determine the expected impact including:

1. The number of paid applications on average per year
2. The number of unpaid applications on average per year
3. The proposed application fee amount
4. If the fee amount will be indexed each year
5. If FSANZ will be committing to timeframes for all applications (not just expediated applications) now that a fee is being charged.

Charging a fee to assess an application could be a reasonable cost-recovery option provided the fees are transparent and scalable based on the resources required. If a fee is to be charged for each application, then consideration should be given to removing the ability to expediate applications by paying an additional fee.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

In undertaking entrepreneurial activities and seeking funds from industry, it will be important to ensure that there is no real or perceived industry capture and that FSANZ retains its independence. This needs to be carefully considered and mitigated if proceeding.

Cost-recovery through entrepreneurial activities by FSANZ may result in reduced industry innovation, inhibition of the creation of a culture of government transparency and accessibility, and a perception of reduction of services to the public. There may also be a potential negative impact on food safety, if there is cost-associated reluctance by businesses to access FSANZ for information which educates or otherwise leads to improved food safety practices.

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?

No

Free text box, no character limit:

The proposed avenue of cost-recovery from jurisdictions is of concern. It is not thought that jurisdictions should be required to pay for using and participating in the system that underpins the bi-national food system. We also note the extensive resources that jurisdictions currently commit to the system via application and proposal consideration, support of working groups as well as significant cost-shared funding of projects and functions.

Cost recovery from jurisdictions will not contribute to a more sustainable funding base as jurisdictions experience many of the same resourcing pressures as FSANZ and may instead result in a reduction of engagement by jurisdictions with FSANZ to save on costs.

FSANZ's role in food recalls is limited to coordination at the national level only and jurisdictions are responsible for communication, investigation, monitoring and enforcement of food recalls in each of their jurisdictions. This requires a significant number of resources which are already funded by each jurisdiction. If a cost was charged for FSANZ to coordinate a food recall then jurisdictions may instead take on this role to reduce their costs.

Consideration may also need to be given to clarifying whether FSANZ's role in coordinating food recalls should be enshrined in legislation.

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:

No 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?

No

Free text box, no character limit:

It is not clear how charging jurisdictions fees for proposal work and industry for application work would assist in prioritizing proposals. If administration of the Food Standards Code, which included holistic reviews, was a core function of FSANZ, this would greatly reduce the number of proposals and project work requested by jurisdictions. Ultimately, amending the statutory time frames of applications would also be required for FSANZ to rebalance its priorities of applications versus proposals. In addition, the workplan is often conducted in partnership with jurisdictions with jurisdictional resources relied on to enact this work. If a charge was placed on adding to the workplan, would FSANZ use these resources to take up these activities instead of jurisdictions?

There is concern with the proposed avenue of cost-recovery from jurisdictions. It is not thought that jurisdictions should be required to pay for using the system that underpins the bi-national food system. It is also noted that the extensive resources that jurisdictions currently commit to the system via application and proposal consideration, support of working groups as well as significant cost-shared funding of projects and functions.

Cost recovery from jurisdictions will not contribute to a more sustainable funding base as jurisdictions experience many of the same resourcing pressures as FSANZ and may instead result in a reduction of engagement by jurisdictions with FSANZ to save on costs.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Negative

Free text box, no character limit:

This could serve to undermine the success of the food regulatory system as a nationally coordinated system. Such a levy could create disincentive to partake in the national system (particularly for smaller jurisdictions).

How would this need to be implemented to be successful?

Free text box, no character limit:

No comment.

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

No comment.

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:

The likely impact of this action would be to reduce proposals and project work requested by jurisdictions through the FMM. Much of this work relates to updating out-of-date standards, addressing regulatory issues or acting on Ministerial policies to improve public health and safety, which should ordinarily be part of FSANZ's core functions. This will likely result in even fewer proposals being progressed and a greater focus on individual industry applications.

A successful independent food standards body, such as FSANZ, requires adequate funding. FSANZ's funding has significantly decreased over the years and is well below that of comparable overseas countries (per capita). In recognition of the impact of ensuring a safe and healthy food supply on the population and on the economic value of Australian foods, we are of the view that adequate base funding of FSANZ rather than piecemeal funding is needed.

Jurisdictions work in partnership with FSANZ as part of the food regulatory system and undertake project work, leading and participating in working groups and subcommittees. The resources required for jurisdictions is funded by the jurisdiction, for example in Queensland, the resources for Queensland Health are paid by the Queensland Government and not by service charges or cost recovery from industry or FSANZ.

How would this need to be implemented to be successful?

Free text box, no character limit:

It would be necessary to adequately fund FSANZ to administer the Food Standards Code by regularly reviewing standards, addressing regulatory issues and acting on Ministerial policies to improve public health and safety. It might then be possible to charge jurisdictions for additional project work that falls

outside of this remit.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Yes

Free text box, no character limit:

Savings on research costs within the food regulatory system may be possible without changing the existing system and legislations. Greater collaboration with universities and other research agencies may reduce costs associated with surveillance and other research activities by attracting university students (e.g. on PhD scholarship) to undertake research on FSANZ-initiated projects. Higher education research and/or research agencies may apply for Commonwealth and/or private sector grants and/or matching funding, e.g. ARC-linkage. This has the benefit of engaging specialised research expertise.

However, careful, informed, and technically skilled national coordination and ongoing management of such projects is required to consistently deliver intended outcomes. This would require additional long-term, consistent funding of such positions, potentially within FSANZ.

Other cost savings may also be possible without changing the existing system and legislation. For example, digital compliance monitoring and streamlined analysis reporting could result in cost savings for jurisdictions and FSANZ.

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:

It is important that FSANZ, as a scientific and technical body that prepares food standards, needs to be well aligned with food regulation policy priority setting framework of state, territories, the Commonwealth and New Zealand governments. FSANZ priorities for dealing with applications and proposal are already discussed at Food Ministers' Meetings, however, this could be elevated to a broader discussion about a shared vision of system priorities that extends further than prioritising work on applications and proposals.

It needs to be kept in mind in establishing any mechanism for developing shared system priorities, that Minister's may have little technical, or policy related knowledge of food policy and standards issues and that they may rely heavily on briefings by their departments and the deliberations and decisions of FRSC. Furthermore, in the past it has sometimes been difficult to get ministers on the Food Ministers' Meeting engaged on food regulation issues and Food Ministers' meetings may be attended by proxies rather than relevant ministers. As such, the role of the FRSC would need to be considered in the establishment of any FSANZ and FMM joint priority setting mechanism.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In addition to the factors listed on page 63 of the report under Component 2.4.1 (that is, public health and safety, strategic plan, bi-national issues, other plans, emerging trends and evidence base), consideration would need to be given to (1) resources and (2) any urgency to deal with an emergent issue or threat (ideally in a proactive manner). Emergent issues may include the introduction of a new technology. Past examples of novel technologies have included irradiation, genetically modified food, and presently the development of cell-cultured foods. Past threats have included new diseases like bovine spongiform encephalopathy.

Whatever the mechanisms for agreeing system priorities, they will need to take account of how these priorities might vary, for good reasons, among different jurisdictions.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

No comment.

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:

It is agreed that it would be helpful for a formal mechanism to be established for FSANZ and FRSC to engage with each other on the development of food standards, which currently need to go via the Food Ministers' Meeting. However, it is acknowledging that FSANZ has recently proactively engaged with FRSC on some standards related matters, like targeted consultation on Proposal P1062 Defining added sugars for claims.

A formal mechanism for FSANZ to engage with FRSC to create a shared understanding of objectives and limitations with regard to food standards development would be helpful for clarifying the scope of proposals.

A formal mechanism for FSANZ to engage with FRSC would also be helpful for matters identified outside the scope of FSANZ that may need to be progressed by FRSC or referred to other forums to manage. While FSANZ does not have a role in setting food regulatory policy, FSANZ may identify issues during assessing applications and proposals that require policy consideration (e.g. as a result of innovation) but fail to raise these with the FRSC. This may result in policy effectively being set by the progression of industry applications setting a precedence rather than through policy processes considering a broader range of issues. Failure to progress policy work 'outside the scope of FSANZ' has previously resulted in some matters being unnecessarily being stalled. For example, when FSANZ was considering an application to permit low-THC hemp seed foods, it dismissed certain issues as being out-of-scope (e.g. policing, drug minimisation, medical cannabis regulation concerns) and did not raise these as policy related matters that needed to be resolved. As a consequence, a review was requested by the FMM and permission for low-THC hemp seed food products could not be implemented until a number of policy issues were addressed including amendment of state and territory legislation.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Consideration could be given to FSANZ formally engaging with FRSC in relation to the scope of important and major proposals to ensure there is agreement and a shared understanding. This may potentially reduce the risk of proposals ultimately being rejected.

Consideration should also be given to a formal mechanism for FSANZ to advise of out-of-scope issues identified during proposals that may require further policy work or be referred to other forums or agencies to progress because some issues are broader than food policy and regulation. For example, out-of-scope issues may relate to Australian Consumer Law, drug policy and policing. Furthermore, implementation of some food standards may require amendment of state and territory laws, for example, previously the sale of low-THC hemp seed foods and in the future the production of cell-cultured foods. Ideally, and more efficiently, out-of-scope issues may need to be considered by FRSC and if necessary, then referred to FMM if they require formal referral to another ministerial forum or agency.

Possibly FSANZ could engage discussion with FRSC by lodging agenda papers for discussion at FRSC. For more strategic discussions such as priorities could be held in longer workshops, possibly in conjunction with other strategic workshops held by FRSC on an annual basis.

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 is appropriate for FSANZ to assume a role as database custodian for Australia on key food composition, nutrition and food safety data directly relevant to the role of FSANZ and food standards. It needs to be acknowledged that FSANZ has held this role in relation to the Australian Total Diet Study and other datasets, and that this role should be maintained and enhanced to improve intelligence-led decision making in relation to food standards.

It needs to be acknowledged that database custodianship requires long-term funded staffing and infrastructure (i.e. IT systems) to support the databases. Suitable protocols and processes must be established to ensure privacy, the security of the databases and the ability of jurisdictions to access data for their own approved purposes. FSANZ's independence must also be retained.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

FSANZ should be the guardian of key composition and nutrition data bases which underpin food standards including labelling (NIP, health claims). Furthermore, support is given to FSANZ maintaining the data it already holds on monitoring the safety of the food supply and continuing these functions in relation to the Australian Total Diet Study, Implementation-Subcommittee food surveys, surveys undertaken by or for FSANZ on various contaminants, and food safety standards baseline studies. All these studies were undertaken with a view assessing food safety and nutritional risks and informing the development of better food standards.

Although some food safety data is held by FSANZ, such as food recalls due to notifiable pathogens, other food safety data is more properly held by other agencies. For example, OzFoodNet holds epidemiological data about incidence of food-borne pathogens (at whole genome level), outbreak investigation findings relating to food pathogens and consumer consumption patterns and can provide early warning of a potential outbreak. There does not appear to be value in FSANZ taking guardianship of this database, though it is acknowledged the information may be valuable to FSANZ when microbial risk assessment for standard setting and preparing imported food risk assessments.

The role of FSANZ has a database custodian needs to be clarified in relation to the newly established Australian Centre for Disease Control to ensure there is not duplication. Furthermore, opportunities could be explored for the two agencies to work collaboratively in relation to food safety data (particularly for microbial foodborne illness pathogens) and help build national capability under the One Health model.

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:

Cautious support is given to building of better strategic relationships with comparable international agencies to share assessment or standards to make these together for mutual benefit as part of the harmonisation process and participating in relevant food standards forums and committees to enhance Australia and New Zealand's influence. However, extending the international role into other areas such as policy and trade should be the role of other government agencies and not the remit of FSANZ.

Potential benefits for jurisdictions include reduced costs associated with regulatory assessment work and access to contemporary data about food safety risks, population health, food consumption and consumer expectations to inform priorities and policy. Greater international harmonisation may also assist with trade opportunities.

The international role of FSANZ could be enhanced through a more collaborative role and through greater participation and sharing of information with jurisdictions and other stakeholders.

Intelligence FSANZ obtains from some international forums could be shared with jurisdictions, particularly where it may help inform monitoring and enforcement decisions, food regulatory risk assessment, and state/ territory food legislation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Sharing of safety and risk assessments with comparable international jurisdictions to assist in reducing duplication appears appropriate where confidentiality can be maintained and data interpreted within the context of Australia.

It should be noted that FSANZ already has a role in sharing food incident and food recall information for internationally traded foods via the International Food Safety Authorities Network (INFOSAN) and other networks such as the European Commission Rapid Alert System for Food and Feed (RASFF). These arrangements need to be maintained. Consideration may need to be given to whether any changes are required to the FSANZ Act to facilitate the sharing of information on investigations and recalls with other countries. Many foods are sourced in whole or part from overseas or exported. It is important that Australia be able to effectively communicate and collaborate with other countries in relation to unsafe foods.

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:

Inclusion of statements of intent may help ensure that the policy position and intent of the standard is clear. However, they may only assist with interpretation of the Food Standards Code only if drafted well and do not restate the obvious. Furthermore, statements of intent may be less effective for requirements (e.g. for specific products) that are spread across multiple parts of the Code.

Versions of statements of intent (purpose statements) were previously included in food standards but were removed when the Food Standards Code's drafting was reviewed in 2016. The need for purpose statements was somewhat reduced with the inclusion of the Basic Requirements provisions (Standard 1.1.1 Division 4) in the Code that link food standards back to the requirements for sale of food and offences in State and Territory Food Acts.

FSANZ now publish an 'explanatory statement' in the approval report for each application and proposal that is similar to the proposed statements of intent. These are published on the FSANZ website under the name of each application and proposal but appear to not be published on the Federal Register of Legislation. However, due to the horizontal structure of the Code, it may be difficult to cross reference them on the Federal Register of Legislation site. It should be noted that the approval reports for older applications and proposal do not include an explanatory statement. Potentially the explanatory statements in the approval reports could fulfil the purpose of the statements of intent if they are more accessible, that is publicly available in a consistent manner and able to be easily searched.

It would also assist if greater emphasis were given to clearer drafting of standards (including definitions) to ensure they are easier to interpret. The structure of the Food Standards Code makes it difficult to interpret some requirements due to the requirements being scattered across multiple parts of the Code (i.e. horizontal structure) and the need for extensive cross referencing. As such, the statements of intent may not in their own right solve the

regulatory problem but assist with the other options, particularly guidelines that can include 'vertical' guidance on the horizontal structure of the Code.

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 underlying policy and intent of the standard written in plain English. They could include the purpose of the requirement and a plain English explanation of the requirement.

It should be noted that FSANZ currently publish the purpose and a short explanation of each requirement in the approval reports for each application and proposal provided to the FSANZ Board and Food Ministers' Meeting.

General statements of intent for each standard in the Code may provide some guidance but be of lesser value for interpreting requirements that are spread across multiple standards. If statements of intent are published solely within approval reports (akin to Bills), it could become complicated and confusing when there have been multiple amendments of a requirement.

One of the current difficulties for interpretation of requirements for specific food products is related to horizontal structure of the Code which means requirements may be spread across multiple standards. For example, requirements for kava may be found in multiple standards within Chapter 1, Standard 2.6.3 and multiple schedules. In the case of kava, a general statement of intent stating the intent was to ensure kava beverage is prepared and consumed in line with historically safe practices may have been useful in clarifying whether colourings and flavourings were permitted, but to improve understanding may need to be also supported by guidance material to assist the lay public identify specific requirements relevant to kava.

To ensure statements of intent are useful, consideration will need to be given to the best way to publish them and make them searchable considering historical changes to a requirement. For example, some standards are regularly amended, which could result in multiple statements of intent making it difficult to identify the relevant one.

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:

FSANZ previously provided guidelines on the Food Standards Code that included useful practical examples for industry. Whereas statements of intent could assist consistent interpretation of the standards, guidelines could focus on their practical application.

FSANZ is best placed to develop the guidance information on the Food Standards Code due to their scientific and technical knowledge and understanding of the intent of the drafting of food standards. FSANZ can also more efficiently develop these during or shortly after standards development and place on their website for jurisdictions to link to from their own websites rather than each jurisdiction recreating similar guidelines.

Guidance on the Food Standards Code will assist jurisdictional consistency, be beneficial for multi-jurisdictional businesses, make it easier for businesses to understand requirements and hence comply, and improve the agility of the food regulatory system. Clarification may reduce the number of industry enquiries to regulators (local and state government).

There is a spectrum of different types of guidance, which span from general guidance material on food standards through to advice provided on a specific issue to businesses considering their unique circumstances. When developing this option, it would be useful to rank the types of advice on such a spectrum to help decide which are most appropriate, benefit the widest number of stakeholders and help solve the policy problems.

Interpretation in a general context, provided it is correct, should not be considered an enforcement function. Consideration should be given to minimising conflicts with enforcement, equity in providing advice to small to medium businesses that may not otherwise be able to afford suitable advice, and food enforcement agencies being also able to access interpretive advice from FSANZ.

The challenge of inconsistencies goes hand-in-hand with inconsistencies of the Food Standards Code. Instead, the Food Standards Code should be able to be amended in a timely manner to consider areas where inconsistencies arise and ability to keep up to date with emerging trends and new food safety issues. While some types of advice can help interpret drafting of food standards, this should be considered a short-term strategy, and mechanisms implemented to correct unclear food standards or clarify its intent.

For interpretive advice, the approach could be that these matters are reviewed through a mechanism where more people/agencies have input such as through a committee that includes jurisdictions. Consideration should be given to mechanisms where interpretation is carried out by a diverse range of stakeholders which may ultimately arrive at a better outcome.

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?

No

Free text box, no character limit:

It is not clear that it is necessary to amend the FSANZ Act to allow FSANZ to do this. FSANZ should consult with stakeholders such as First Nations, Māori peoples, and Culturally and Linguistically Diverse (CALD) communities to ensure guidance material is culturally appropriate and support its uptake.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

No

Free text box, no character limit:

Jurisdictions currently collaborate extensively with FSANZ as partners in the food regulatory system. FSANZ could take a lead role on the interpretation of food standards and enhance collaboration with jurisdictions on interpretation matters as discussed in previous questions.

As FSANZ is not an enforcement agency and does not have any enforcement powers, FSANZ should not provide advice or collaboration on the enforcement of the Food Standards Code. Enforcement is dependent on several factors and is based on food safety risk, business compliance history, and jurisdictional priorities (often external to the remit of food safety officers). The Food Standards Code is enacted through jurisdictional legislation and, while based on the model food provisions, there are differences in each jurisdictional legislation which would limit a whole-of-government approach to enforcement decisions.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Yes

Free text box, no character limit:

Ambiguity in the Food Standards Code leads to inconsistencies in interpretive advice provided by jurisdictions and potential duplication of effort when additional information to explain a standard/s is required.

For example, Queensland Health Food Standards and Regulation has developed a business regulatory reform initiative to create a digital food safety hub, known as the Food Pantry, to better facilitate information sharing between regulators, small to medium enterprises and their consumers to improve food safety in Queensland. One of the components of the Food Pantry is Label Buster, a step-by-step guide for businesses to identify the information they need to create a food label. A similar solution provided by FSANZ could be beneficial for all jurisdictions and industry.

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:

No comment.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

No comment.

What are the current delay costs to industry?

Free text box, no character limit:

No comment.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Yes

Free text box, no character limit:

A report on the costs of inconsistency was prepared by mpconsulting for the Jurisdictional Consistency Project, a component of the Priority 3 suite of work. The Key Areas of Inconsistency section includes many references to costs relating to the development and implementation of standards. It is acknowledged that this report may have already been considered through the Impact Analysis process.

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

It is noted that the Impact Analysis does not include the cost of a highly processed food supply on long-term health and the impact on the increasing costs of treating chronic health conditions on jurisdictional public health systems. These costs should be considered to provide a balanced assessment of the proposed changes.

In quantifying public health benefits for Option 1 (status quo), it is not clear what is meant by 'public health benefit'. The cost-benefit analysis should clarify what this means and describe both short and long-term impacts (including on diet-related chronic illness).

An underlying assumption of the discussion of Option 1 also appears to be that all applications result in a benefit for consumers and public health. Applications are the process through which an individual business achieves market access for a new product or ingredient. The presence of new market access for an ingredient or product does not always result in a safer or healthier food supply; the benefit is mostly commercial. It can often result in products that can contribute to poor long-term health or those that have questionable benefits (such as formulated supplementary sports foods and formulated caffeinated beverages). It is important to consider that the public health and safety benefits (short or long-term) are more certain with the status quo than in the introduction of a new ingredient or product. The cost-benefit analysis should more clearly articulate the public health impacts of applications.

It is also noted that there has been allocated delay costs to industry applications but not allocated delay costs to proposals. Some proposals take up to 20 years or more to progress which results in delayed costs for public health, industry and jurisdictions.

It is also unclear why the 'Review of the regulatory management of food allergens' has been used as the basis to determine the average public health benefits of proposals. A number of more recent proposals have quantified public health benefits, such as those in P1050 Pregnancy Warning Labels and in the proposals for mandatory fortification with iodine and folic acid.

It is also unclear how the costs of developing and communicating food standards was determined. Specifically, the statement that FSANZ bears 86% of the total resourcing costs. Further clarification on how this was determined would be beneficial. Jurisdictions dedicate extensive resources to assisting FSANZ in the development of food standards and are responsible for the communication, interpretation, and enforcement in each of their own jurisdictions.

In addition, we believe the statement "the majority of the food safety regulation costs are borne by industry and FSANZ to achieve public health outcomes" is not correct as food safety regulation is a partnership between FSANZ, Australian States and Territories, the Australian Government and the New Zealand Government. The costs for food safety regulation is therefore also shared across each of these agencies. For example, in Queensland, the regulation of food safety is the responsibility of Queensland Health, Safe Food Production Queensland, the Department of Agriculture and Fisheries and 77 local governments.

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:

The costs and benefits to jurisdictions, separate from the Australian Government, could be quantified in further detail. For example, the quantifiable cost included for cost recovery of the proposed food recall coordination levy and for adding items to the workplan is a combined cost of \$AUD 7.8million. What is the proposed cost for each of these two separate cost recovery models? What is the proposed cost per jurisdiction? In addition, the costs and benefits to jurisdictions on changes to applications and proposals is not included in Option 2.

The burden of chronic disease caused by consumption of a highly processed food supply should be considered. This issue has been previously raised by reputable public health groups.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

Free text box, no character limit:

A range of data from reputable public health and academic institutions has previously been provided. This data, along with the national and international burden of disease work should be incorporated into any cost-benefit analysis if this has not already been included.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

The cost of chronic ill-health created by a highly processed food supply should be included in this analysis. Consideration should be given to the overall impact of applications on public health, the delay costs of proposals and the underlying assumptions for public health benefits being based on the regulation of allergens. In addition, greater consideration should be given to quantifying the public health impact of the proposed reduction in regulatory oversight. The underlying assumption in attributing a public health benefit to applications is presumably due to the nature of FSANZ's pre-market safety assessment process but has not adjusted this under Option 2.

The Impact Analysis suggests that one of the benefits of these reforms will be in freeing up FSANZ to process more proposals and in a timelier manner, however Option 2 indicates that the number of proposals will remain the same. In addition, there is no commentary on the proposed timeframes to complete proposals. While proposals can vary in complexity, it is generally recognised that timeframes of 10 to 20 years (as taken with several proposals currently) are excessive.

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?

Yes

Free text box, no character limit:

Consideration should be given to comments previously provided under Section 3 above in relation to certain sub-problems and suggested solutions to improve the extent to which the policy problem is solved by these reforms.

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

The ratings are quite general and rely on a number of unclear criteria and assumptions.

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:

In relation to the Option 2 risk 'Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks', the Impact Analysis report shows that there is quite a high likelihood of there being a moderate risk that clarifying the definition of the protection of public health and safety within the FSANZ Act to be in line with current policy guidance could inadvertently widen the scope of FSANZ's remit in managing public health risks.

We consider that the risk is lower than stated in the Impact Analysis on the basis that the consideration of longer-term risks of non-communicable food-related illness is already routinely included as part of FSANZ's remit. The Impact Analysis indicates this will largely be a new function for FSANZ, despite FSANZ currently being able to consider long-term risk.

In relation to the Option 2 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', the Impact Analysis has assigned a very low-risk rating of 5 and does not adequately reflect that the gazetting of food standards will not only bypass review by the independent FSANZ Board, but also be overseen by non-elected officials.

Consideration also needs to be given to the cumulative risks of the combination of the decision-making processes for low-risk amendments with other proposed pathways for low-risk amendments such as acceptance of overseas risk assessments and minimal check pathways. The overall risk for the protection of public health as well as for the protection of Australia's reputation for a high quality and safe food supply could be significant.

It will also be important to understand how delegated government decision-makers would be authorised to request a review if they had concerns about the proposed amendment. Alternatively, consideration could be given to changing the 'low risk' status of a proposed amendment to higher risk should there be any jurisdiction that does not support the amendment.

In relation to Option 2 risk 'Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed', the Impact Analysis does not include the risk that the levy will be passed onto consumers further increasing the costs of food and groceries, with a flow-on reputational risk to the Australian Government with the current cost-of-living crisis.

In relation to Option 2 risk, 'Imposing a food recall coordination levy could increase the risk of non-engagement with FSANZ by jurisdictional enforcement agencies, resulting in less well managed foodborne risks', this risk does not include any reference to the other proposed cost recovery of jurisdictions to add items to the workplan/Proposals. This risk should be further considered.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

See comments in the previous section.

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:

In Figure 11 Conceptual Approach for the Evaluation of the Preferred Option, consideration should be given to including an outcome relating to the impact of the reforms on the Section 3 Object and Section 18 primary objective relating to the protection of public health and safety. This could be included in the measuring success against key outcomes.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

While FSANZ currently does not develop food policy, it frequently identifies issues during its consideration of applications and proposals that should be addressed as policy issues and need to be raised for policy consideration. This could occur with new or novel food, substances, or processes and emerging trends.

The failure to identify and advise the Department of Health and/or Food Regulation Standing Committee has resulted in some issues unnecessarily being stalled. For example, when FSANZ was considering an application to permit low-THC hemp seed foods, it dismissed certain issues as being out-of-scope and did not raise these as policy related matters that needed to be resolved, such as policing concerns. A mechanism needs to be identified where policy issues identified by FSANZ during consideration of applications and proposals can be raised for policy consideration, whether this is considered through the application and proposal process or referred to another agency for out-of-scope matters.

It is important that food regulation keep abreast of emerging issues so that food standards can be kept contemporary. FSANZ has invested resources in considering new developments such as novel food production techniques (e.g. CRISPR-Cas9), acrylamide and nano particles. It is important that this continue to be supported, and it is important that FSANZ raise food standards problems they identify with policy makers so that the work of maintaining food standards receives suitable policy consideration.

It is important to ensure FSANZ has the best opportunities to recruit staff with the necessary skills and to assist in stakeholder engagement. This could possibly involve FSANZ establishing offices outside of the ACT.

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:

No comment.

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:29:43

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
[REDACTED]

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
CropLife Australia

Which sector do you represent?

Other (please specify)

Other: :
Agricultural Chemical & Plant Biotechnology Sector

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::
[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:

Much greater care is needed when drawing on existing literature. The limited number of citations adversely affects the ability of the Impact Assessment to represent current sector-wide issues and concerns. Moreover, how particular works are analysed and subsequently selected for inclusion needs to be reviewed. For example, reference 25 on page 33 (Sambu et al 2022) was retracted on the 9th of Jan 2024. Although this retraction was presumably while finalising the Impact Assessment, a range of high quality citations would have been expected when a point that requires careful discussion and nuanced interpretation like linking food additives to a range of adverse health outcomes.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

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 ratings provided are, on the whole, appropriate. However, the rating of Problem 1 Sub-problem 1 is perhaps higher than expected. Considering current FSANZ activities, confusion likely arises from the application rather than the act definition. A policy paper outlining, for example, how considerations of long-term health might impact individual product applications versus revising a labelling scheme would likely provide greater clarity.

Although only a minor score difference, Problem 2 Sub-problem 1 deserves the maximum score. As noted within the Impact Analysis and discussion in subsequent questions, considerable efficiency gains are to be achieved via a shift towards outcome-based assessments.

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):

As mentioned in Section 3, confusion likely arises from the application of the definition rather than the actual definition. A policy paper outlining, for example, how considerations of long-term health might impact individual product applications versus revising a labelling scheme would likely provide greater clarity.

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):

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Neutral

Additional comments (optional):

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?

No

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

It is unclear if an alternative communication would alleviate the mentioned stakeholder concerns. Although only a single standard was referred from the Food Ministers, this doesn't alter the possibility that the provision has the potential to open Australian and New Zealand food standards to politicisation.

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:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

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:

Risk-tiering analysis represents best practice that ensures safety and wellbeing while greatly improving the efficiency of new applications.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

Noting that as mentioned, further work is needed to refine any such model. However, the guidelines framework provided does appear like a reasonable starting position. Particularly noting that existing approvals and large bodies of evidence should greatly reduce risk.

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:

With the caveat that we do not directly apply for approvals, we expect the introduction of such a framework would facilitate a greater range of foods being introduced into the Australian market.

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:

As recent GM food risk assessment sharing with Canada has demonstrated, such relationships provide FSANZ with significant efficiency gains without compromising health and safety. With the significant similarities between the Australian system standards and other jurisdictions widening this sharing/adoption of risk assessments reduces the enormous amount of global redundancy in the process.

It further enables FSANZ to manage its total cost of operations without sacrificing community benefits of the scheme.

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:

Automatic acceptance provides an opportunity to rapidly and efficiently adopt international best practice (particularly when adopting provisions from the Codex Alimentarius). However, any changes need to be worded in such a way as to emphasise that the use of these standards is at the discretion of FSANZ and does not constitute a requirement or even a recommendation.

The development of a mechanism to support the use of international standards and the acceptance of risk assessments from international jurisdictions should be developed to ensure that FSANZ's workforce is appropriately guided on their use. Without it there is a risk that the efficiencies that could be gained by these opportunities may not be realised due to internal risk aversion.

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 proposal is consistent with the development of a risk-tiered approach to regulation with the objective of streamlining approvals without compromising wellbeing. This results in quicker pathways to market for food businesses. It will also help facilitate Australian innovation by removing barriers.

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:

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

It is difficult to say for certain without precise details, however, new pathways would potentially streamline the assessment process.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Yes

Free text box, no character limit:

Presently the FSANZ decision making process is highly cumbersome and risks ministerial intervention over and beyond the application of regulatory science that is focused on the Act's objectives of ensuring a high standard of public health protection. With the Board, Minister and Food Minister's Meeting exercising decision-making power, even applications or proposals seeking to introduce minor variation to food regulatory measures can be captured by this process. When considering specifically the Board, Section 150 provides an unnecessary restriction on delegation that is independent of any risk factors. This delays the decisions, duplicates assessment and provides an unnecessary burden on the Board and potentially complicates commercial decision making among the food industry.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The outcome of any change needs to be the key factor in determining risk. Key factors in assessing this risk should include the scale (new versus variation), similarity to existing provisions, or acceptance in other jurisdictions. The proposed framework (Table 10 p51) and Appendix D encompasses these issues and highlights how a risk-tiered approach could operate. However, it should be noted that weightings of each criterion could impede its effective operation. Moreover, undue weighting on FMM priorities or their unguided interpretation greatly risks the politicisation of our food regulatory system and impedes its aim to '[m]aintain a strong, robust and agile food regulation system'.

What would be the impact of streamlining decision-making arrangements for you?

Positive

Free text box, no character limit:

With the caveat that we do not directly apply for approvals, we expect the introduction of such a framework would facilitate a greater range of foods being introduced into the Australian market.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Appropriate training, experience and role. Potentially a pre-approved list of appropriate individuals could be developed. As highlighted, this is a case-by-case consideration.

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:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

Delays in reviewing standards serve as significant barriers of innovation. For example, P1055 - Definitions for gene technology and new breeding techniques has seen significant delays in implementation. The slipping of the expected timeframe for the second P1055 consultation, and subsequent finalisation, has created considerable commercial uncertainty. This has not only impacted the food industry, but indeed investment in the upstream innovation the proposal seeks to regulate through the agriculture sector and in advanced application of synthetic biology in food production. As a result, Australia has lost some of its standing with the global marketplace for this style of investment. The introduction of greater resourcing would ensure more timely competition. While holistic revisions would be welcomed, the priority needs to be on the timely completion of any review.

The review of the Act should also consider opportunities for FSANZ to direct resources into the more central and strategic proposal assessments. Options for this could include the ability for FSANZ to engage external scientific reviewers.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

It is critical that greater industry engagement be undertaken, and at regular intervals to ensure priorities are identified in a timely manner.

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:

Potentially this would ensure issues found to be low risk do not undergo the extensive review process. For example, Case Study 1 (Appendix D) provides a key example of a case where a lengthy assessment achieves little other than to delay market access to novel but highly similar products. Providing a rapid and cost-effective market pathway ensures access to safe and innovations foods.

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:

See previous question

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:

Component 2.2.1 outlines a threshold-based process for risk-tiering. An overall assessment pathway could be modified to include the creation of Codes of Practice/guidelines at lower risk levels.

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:

With many industries already having developed global Codes of Practice that ensure the long-term stewardship and public licence of their products, these could be incorporated into the Food Standards Code. This incorporation would greatly improve global regulatory harmonisation while ensuring the safety and wellbeing of Australian/New Zealand consumers. Just noting that multiple mandated codes for a given issue must be avoided.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Yes

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Negative

Free text box, no character limit:

It would potentially reduce flexibility in the application process

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:

Although CropLife Australia is generally supportive of cost recovery, we have reservations with significant changes to existing provisions occurring within the context of this review. Particularly without clearly defined endpoints. Moreover, any cost recovery provisions need to take into consideration similar provisions in other agencies to ensure products to ensure pathways to market are not unnecessarily burdensome or duplicated among other agencies. Much greater industry-wide detail is needed to ensure that any such process do not compound each other and result in further increases to food prices.

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:

This is impossible to determine in an exercise such as this.

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:

This is impossible to determine in an exercise such as this.

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

This would likely result in fewer products being brought to the Australian market and possibly higher prices for those that are.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Neutral

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?

Annual Levy

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

Data sharing via central repositories facilitates access and use of data. The incorporation of all FSANZ-related data would ensure all stakeholders would have quick and easy access while also providing a comprehensive map of all related datasets.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

All publicly available data collected by or on behalf of FSANZ.

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:

As mentioned previously, sharing between FSANZ and Health Canada for GM food risk assessments has provided significant efficiency gains. Expansion of this data sharing would minimise global duplication of effort.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

A key focus could be the expansion of risk assessments sharing with Health Canada to non-GM foods where standards align. Moreover, additional trusted global partners could be identified.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

Any steps to improve clarity would be welcomed.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 13(1)(c) could be extended to explicitly include numerous groups, including First Nations Māori peoples. In addition, the inclusion of industry stakeholders could also address underlying issue partially addressed within the previous question.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

Yes. Some parts of the submissions are confidential

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Please retract my name for privacy reasons and make the submission from CropLife Australia

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:50:19

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Damian Maganja

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

The George Institute for Global Health

Which sector do you represent?

Research/Academic

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

[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:

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

In particular, the continued exclusion of the main problem with the current food regulatory system, that people are not effectively protected from long-term health impacts and preventable diet-related diseases, must be justified. This is the primary objective of FSANZ, however is not mentioned in the IA at all and as a result the methodology completely fails to factor this in.

The current methodology is therefore flawed as it fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations.

Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to “address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people” and “address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production”. The Act should include responsibility for food systems security and their vulnerability to climate change via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand’s national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that impact only the very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1), or refer to potential food safety risks which are currently extremely well managed (Policy Problem 4, sub-problem 3), as is currently proposed in the IA. These sub-problems are not of the same magnitude as widespread threats of harm to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with those risks.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Sub-problem 1 | Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures

We support the ratings for this sub-problem in the IA - high impact and large extent (3), given potential to undermine public health and safety but note that there are no reforms proposed under Option 2 that resolves the problem of ‘how’ FSANZ should consider long-term risks to health when developing food regulatory measures.

Sub-problem 2 | There remains some confusion about the factors to which FSANZ has given regard in its decision-making, and how this aligns with the objectives of the Act.

Ministers retain overall responsibility and accountability for the food regulatory system, if this is undermined in any way (particularly through not considering Ministerial policy guidance or not communicating effectively on consideration of guidance) then responsibility and accountability, ultimately public and stakeholder confidence, in the food regulatory system is diminished. The rating for this sub-problem should be higher - level of impact should be at least moderate (2) and extent of impact large (3). Note that nothing proposed under Option 2 will address this as there is no requirement to

prioritise compliance with Ministerial policy guidance above other considerations.

Sub-problem 3 | The Act is silent on the needs and commitments of government to First Nations and Māori Peoples

We support the ratings for this sub-problem in the IA but note that nothing proposed under Option 2 will necessarily address this, and meaningful improvements could be available under Option 1

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Sub-problem 1 | Statutory processes are rules-based rather than outcomes-based

The IA acknowledges that the vast majority of applications are processed within timeframes but fails to acknowledge that the significant problem with delays lies in the processing of proposals. The reforms in Option 2 only act to make applications even more efficient, despite the majority already being completed within timeframes, and no reforms are proposed to address the delays in progressing proposals.

We consider the level of impact rating of high (3) given to this sub-problem inappropriate in reference to applications and suggest a rating of moderate-low (1-2) - the impact has not nearly the same magnitude as risks to short-and long-term health and should therefore not be rated as high. The extent of impact is extremely limited and should be given a rating of limited (1) in relation to applications as the problem only has significant negative implications for a small cohort of industry stakeholders. We note that nothing proposed under Option 2 will necessarily address claimed inefficiencies in resourcing, particularly as Option 2 proposes to only speed up some applications, most applications already assessed according to statutory timeframes, and applications are acknowledged by FSANZ as taking up minimal resources.

We would support these ratings for the purposes of reflecting the issues with progressing proposals but note that the framing of this problem does not encompass proposals.

Sub-problem 2 | Current requirements create barriers for Indigenous foods to be brought to market

The IA has not articulated how “diets and needs” are linked to “barriers to bringing traditional foods to market”. It has also not explained why traditional foods need to interact with novel food provisions of the Food Standards Code, demonstrate safety and be approved via an application as the vast majority of foods do not need to follow these processes to be bought to market. Given the absence of evidence and framing of the problem, the level of impact and extent of impact should both be low (1). We note also, that to the extent this is an issue, none of the reforms proposed under Option 2 will address this.

Sub-problem 3 | Resourcing constraints have effectively preferred piecemeal changes to food standards over holistic reviews

We support the ratings for this sub-problem in the IA - high impact and large extent (3), given potential to undermine public health and safety. However we note that this is not necessarily related to the Act, and resourcing constraints could also be overcome under Option 1. Option 2 presents only limited options to address this, and other options to address funding decreases (for instance an increase in substantive funding for FSANZ independent of cost-recovery mechanisms) exist under both Options 1 and 2.

Sub-problem 4 | FSANZ generally defaults to developing food standards, but other regulatory measures could be more efficient to create

‘Other regulatory options’ are available to FSANZ currently and no change is proposed under Option 2 that could not be done under Option 1. The non-use of other regulatory measures is in itself necessarily only a low impact and limited extent (should both be rated 1); rather, it is the impact of that use/non-use that is of relevance and this is covered elsewhere in the reform options.

Policy Problem 3 | Elements of FSANZ’s operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Sub-problem 1 | Current legislative provisions prohibit nominations and appointment processes for the FSANZ Board from adopting best practice

We agree with the ratings given.

Sub-problem 2 | Long-term decreases in funding has created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions

We agree that the level of impact of this problem is considerable and that the current rating of 3 is appropriate. However, the extent of the problem

extends far beyond implications for stakeholders and affects all Australians and New Zealanders, as such the extent should be rated 3. Option 2 presents only limited options to address this, and other options to address funding decreases (for instance an increase in substantive funding for FSANZ independent of cost-recovery mechanisms) exist under both Options 1 and 2.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem. We also support the sub-problem 1 and 2 ratings, noting that reforms proposed under Option 2 can all be done under Option 1 for each of these sub-problems.

Sub-problem 3 | Inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies, while potentially undermining management of foodborne risks (Australia only)

Food safety risks are currently extremely well managed in Australia, as such the level of impact should only be rated as moderate (2). We suggest that a race to the bottom, in an effort to align requirements and minimise compliance costs for industry, is a real potential and will instead present further risks not considered in the IA and therefore suggest an extent of impact rating of large (3).

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

Recommendation: The Act is amended to ensure Ministerial Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. Aboriginal, Torres Strait Islander and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for Aboriginal, Torres Strait Islander and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with Aboriginal, Torres Strait Islander and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

We note that it is not sufficient to rely on a public submissions process for groups that are small, and have high demands for advice and consultation and specific consultation should be undertaken to ensure that changes in the Act reflect Aboriginal, Torres Strait Islander and Māori ways of being, knowing and doing and are appropriate to the regulation of food as it relates to their culture and health.

Finally, we urge the development and implementation of the Tier 2 and Tier 3 concepts, including through the detailed consultation mentioned above, as these may more meaningfully include and consider Indigenous cultures and expertises.

Recommendation: Specific consultation with Aboriginal, Torres Strait Islander and Māori people and experts needs to be undertaken as a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with Aboriginal, Torres Strait Islander and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed. It is our view that despite the significant policy development included in ministerial policy statements, decisions of Food Ministers etc, the lack of clear and unambiguous guidance on how to achieve public health outcomes through food standards within the Act is a fundamental limitation.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

Recommendation: A Public Health Test, or set of considerations, that guides processes and decisions across the food regulatory system is introduced into the Act to set clear and consistent guidelines and expectations for how public health risks and benefits should be taken into consideration.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The IA provides extremely limited details about the risk-based framework, such that we cannot support this approach. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for public health and industry decisions. There is an apparent bias towards food industry/commercially driven decisions being assessed as 'low risk' and public health decisions always being assessed as 'high risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

Given claims that applications take up only a small fraction of FSANZ's resourcing, any moves to process some applications faster will likely not result in significant improvements to how FSANZ prioritises and resources work on activities to support public health and consumer objectives.

We have real concerns that this approach will negatively impact public health. The above, combined with the misleading conclusion from the Cost Benefit Analysis that all benefits under Option 2 are for public health while all costs are to industry, means we have strong concerns for the potential of a risk-based framework to negatively impact public health. This does not suggest a balanced approach for delivery of FSANZ's stated primary objective of a high standard of public health protection throughout Australia and New Zealand.

Noting our general concerns, if this component is to proceed we strongly support a separate, comprehensive public consultation on the risk-based framework to ensure the concerns for public health are addressed. Specifically, we request further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

Recommendation: That the development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

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:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework. There may be both risks and opportunities to the introduction of a risk-based framework, however the lack of detail about how the risk assessment would operate in practice means we are unable to estimate the benefits or risks with any certainty. Please see our response to previous questions for further details.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).
- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there

appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health-related measures and suggest bodies like the World Health Organization are included. Rigorous, transparent assessments and reporting of real, potential or perceived conflicts of interest of the assessing bodies, actors involved in assessments and the submitted evidence should be undertaken before these can be accepted.

- Should risk assessments be accepted from elsewhere, an additional layer of assessment relating to the Australian and New Zealand context, and particularly impacts on Aboriginal, Torres Strait Islander and Māori people, will be necessary to provide assurances that outcomes of risk assessments are appropriate for our populations, regardless of the technical qualities of those risk assessments

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised are likely to be things that progress highly processed foods harmful to long-term public health onto the market.

It is also unclear how this would work in practice as 'enabling FSANZ to automatically recognise' remains ambiguous. The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured. The decreased transparency prior to decision-making, and the removal of the potential for independent, critical oversight of process leading to decisions, remain of substantial concern.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made 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?

No

Free text box, no character limit:

As above, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present. Once consultation on the risk framework has been completed and the risk framework is finalised, we would be open to considering delegation arrangements of some low-risk decisions.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with Aboriginal, Torres Strait Islander and Māori people and experts to understand what they need and want from the food regulatory system.

However, the purpose and benefit of this proposal remains uncertain, as traditional foods do not fall under the current scope of novel foods (Standard 1.1.2—8) and it can be assumed that any traditional foods that have already passed nutritional and compositional assessments would not be included as prohibited or restricted foods (Schedules 23 and 24). As such, it is unclear whether any other traditional foods would need to pass nutritional and compositional assessments to come to market. As there is no other identified need to interact with the Food Standards Code in the IA (beyond general provisions that apply to all/most foods e.g. labelling), this is unlikely to support increased entry of different traditional foods to market.

It also remains unclear what the extent of this one-off investment of time and resources would involve. As such, this option may be readily available to FSANZ already.

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-Aboriginal, Torres Strait Islander or 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?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with Aboriginal, Torres Strait Islander and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of Aboriginal, Torres Strait Islander and Māori people. Guidance material that has been appropriately consulted on, co-designed and co-constructed has the potential to ensure that traditional foods can be safely assessed, and not enter the market in a way that is detrimental to Indigenous communities or the broader population. Further examples of the development process for guidance materials are needed, as with the current level of information provided we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food to market. Furthermore, it remains unclear why traditional foods need to be assessed for safety in the first place; according to Standard 1.1.2—8, a “novel food means a non-traditional food that requires an assessment of the public health and safety considerations”, and a “non-traditional food means... a food that does not have a history of human consumption in Australia or New Zealand”.

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Recommendation: The Act is amended to include statutory timeframes for standard reviews (3 years).

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

See:

• Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

• Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

The reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Recommendation: The Act is amended to include statutory timeframes for proposals (3 years).

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of additional skills that would support good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in Aboriginal, Torres Strait Islander and Māori food and culture could be added to these additional skills we note that for adequate Aboriginal, Torres Strait Islander and Māori representation on the FSANZ Board specific positions for Aboriginal, Torres Strait Islander and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact Aboriginal, Torres Strait Islander and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is a level playing field for all those making applications.

Recommendation: The Act is amended to remove the expedited applications process.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is a key issue for FSANZ. An industry wide levy will provide a reliable source of known funding for FSANZ on an ongoing basis. It would also result in a level playing field for industry who receive vast benefits from FSANZ work as outlined in the IA in the discussion on component 2.3.3.

Recommendation: The Act is amended to implement an industry wide levy.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

We support that this levy should only be applied to the largest food businesses, and we support the top 5000 as suggested in the IA.

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees will not result in a level playing field for all of industry and will result in the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this favours big businesses and puts small businesses at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

FSANZ needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This may relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market.

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:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

The George Institute has significant expertise and experience in collecting, processing, analysing and preparing for public dissemination a range of

relevant data, and we suggest that any future efforts in this area be informed through dedicated engagement with us and other experts.

We further note that concerns with the coverage, reliability and accessibility of the food composition database used for the Five Year Review of the Health Star Rating system prompted a recommendation, subsequently supported by Food Ministers, to develop a comprehensive database of branded food products that could be publicly reported. We remain concerned with the progress of FSANZ's Branded Food Database, the close involvement of food industry and exclusion of public health and consumer stakeholders in its development and implementation, and more generally with the strong potential for coverage, reliability and accessibility to not be assured.

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:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure Aboriginal, Torres Strait Islander and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of Aboriginal, Torres Strait Islander and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on Aboriginal, Torres Strait Islander and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with Aboriginal, Torres Strait Islander and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate Aboriginal, Torres Strait Islander and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The Australian Government Guide to Regulatory Impact Analysis (2020) requires that data sources and methods used to calculate regulatory compliance burden are transparent, that any gaps or limitations in the data are discussed, and that assumptions are disclosed. We do not consider that the cost benefit analysis, as set out in the IA, meets those requirements. Inputs and assumptions that are provided independent of commercial conflicts of interest and are verifiable must be detailed. In particular, we note that the evidentiary basis for certain assigned costs and benefits to industry appears to be considerably less transparent and rigorous than that applied to the assessment of public health impacts.

The quantified outcomes of cost benefit analyses are likely to be influential to the perspectives of stakeholder groups, and particularly when results are presented to decision-makers. However, we have considerable concerns with the inclusions/exclusions, inputs and assumptions feeding into the current cost benefit analysis, as well as the framing and presentation of results. Given this, as well as our feedback on proposed reform components above, we do not consider that the outcomes of or conclusions drawn from the cost benefit analysis, as presented in the IA, can reliably be presented to decision-makers.

The current approach to the cost benefit analysis and framing of the options precludes an appropriate consideration of the relative costs and benefits associated with each component and for each stakeholder group. This is important given the actual outcomes reforms may lead to, and the purposes of the costs and benefits implicated, are diverse; the costs to public good of private benefits from measures to improve commercial outcomes, in terms of diet-related burden of disease and associated impacts on health, social and economic systems, may be considerable, and governments must be advised of these differential impacts to appropriately consider the implications. Widespread public health impacts and isolated, individual business impacts are not equal and should not be treated in the same way.

Finally, we note the summary statement that "Option 1 maintains high costs to industry and FSANZ to achieve public health benefits". We consider this an acceptable and valid outcome for government, given the potential threat to population health posed by the alternatives proposed.

We provide detailed feedback below. Without addressing these items, there is a significant risk that confidence in these analyses and their implications and uses will continue to be undermined.

Common to cost benefit analyses of both Option 1 and Option 2:

- Assumptions, inputs and the data and evidence underpinning them must be more clearly detailed with regard to both quantified and qualified costs and benefits.
- All benefits that are listed as quantified must report explicit figures, to facilitate assessment.
- What is meant by "public health benefits" should be clearly articulated, and short-term and long-term public health impacts should be distinguished.
- The impacts on diet-related burden of disease and associated health, social and economic effects of proposals, standards reviews and applications must be separately considered and quantified, including by stakeholder group (particularly consumers and governments). The IA notes this was "a broad generalisation given the diversity of proposals and applications processed by FSANZ"; this must be adequately explored and detailed.
- The analysis of public health impact must acknowledge harm from food regulatory system actions and activities, both actual (e.g. approved components/products or other permissions which have the potential to cause harm) or delayed (e.g. the lengthy period for development and implementation of folic acid fortification, iodine fortification and alcohol pregnancy warning labels), as well as any possible public health-based actions not undertaken by the food regulatory system (e.g. rigorous and mandatory compositional limits).
- It is inappropriate to suggest that all FSANZ's work has benefits to public health when applications are typically made for commercial reasons, standards reviews are inadequately described in the IA (i.e. there is no rationale stipulated for the assumption that each standard review results in a public health benefit), and some proposals may adversely affect health outcomes (e.g. proposed explicit permission to display added sugar and carbohydrate claims on alcohol, which has been identified by FSANZ as having the potential to mislead consumers, may lead to increased alcohol consumption and thus harm).

- Proposals and standards reviews must be separated in analysis and reporting as they may have different effects. We note with concern that under Option 2 “increase in public health benefits is generated from more standard reviews while continuing to deliver three proposals per year”, given the claimed benefits from freeing/increasing resources to focus on proposals.
- It is assumed that resourcing limitations are preventing FSANZ from completing proposals in a timely way; however it is likely that the contentious nature of some proposals is also a significant factor, and this should be reported in the analyses.
- We note that the current figure applied for public health benefit is derived from an 14-year old outcome and is extremely limited and speculative besides. This proxy used to quantify public health impact may therefore not be appropriate. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women and impact on alcohol-related harms).
- A unit cost/benefit from applications and from standards reviews also need to be distinctly set out, with the rationale detailed.
- It is difficult to agree that the food industry derives no quantifiable benefits from the current (and continuing) features of the food regulatory system, particularly as applications are typically made for commercial reasons.
- Claimed delay costs to industry must be better evidenced; “Sourced from industry consultations” is insufficient.
- The assumption that delay costs to industry from processing applications are passed on to consumers must be better tested, as there is no apparent reason to assume quicker resolution of applications would result in lower prices to consumers.
- New products introduced as a result of approved applications detract from sales and therefore revenue of other, existing products; a new product, regardless of whether it is required to be assessed by FSANZ or not, does not add to total demand for food.
- There are quantifiable benefits to FSANZ and governments more broadly of FSANZ’s work regarding food safety and public health; it is difficult to agree that governments derive no quantifiable benefits from the current (and continuing) features of the food regulatory system.
- The assumptions underpinning Aboriginal, Torres Strait Islander and Māori food industry value add are “Based on current industry growth projections”. That is, these projections are explicitly based on the current food regulatory system, and not the recently proposed reformed food regulatory system. Therefore, these benefits should be noted under Option 1. Any other potential impacts on this sector from proposed reforms are not mentioned. The sensitivity analysis is also insufficiently detailed to assist with evaluation of the impact of the assumed growth rate.
- It remains unclear whether and to what extent activities listed as currently occurring under Option 1 (Table 12), other than an increase to the number of standards reviews, would continue under Option 2. It is also unclear what “a subset of [FSANZ’s] functions” refers to, and what functions are missing from Table 12.
- Extra funding independent of any proposed reforms is assumed for Option 2, without basis. This must also be included for Option 1, or removed entirely.
- A qualified cost to FSANZ, governments and the food industry must be a lack of confidence in the healthiness of the food supply.

Specific to cost benefit analysis of Option 1:

- In Appendix C, Option 1 assumptions, it is noted that only “3 proposals and reviews per year” are included in the analysis for Option 1 yet Table 12 specifies 3 proposals and 1 standard review are conducted per year.
- The potential for products/components to be approved by the Australian and New Zealand food regulatory system, and then exported elsewhere, must be explored as a benefit.
- Public health benefits would be better described as a quantified benefit to consumers. This may have been incorrectly titled as a quantified cost.
- A cost to consumers is stated as “Reduced consumption on food items due to increased costs from cost recovery initiatives”. Given the small number of applications approved each year this is very unlikely to meaningfully affect consumption on a population or even individual level, given the considerable range of options in the current food supply.

 Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal and Torres Strait Islander and Māori peoples. Please note our concerns with the inconsistent application of benefits from this item, as above; current growth expectations are based on the current regulatory system therefore are a benefit from the current regulatory system.

What are the current delay costs to industry?

Free text box, no character limit:

We do not consider it appropriate for delayed revenue to a for-profit industry making commercial decisions to be considered at the equivalent level to real burden of disease and health, social and economic system costs borne by governments and consumers. In addition, it would be reasonable to assume that industry should factor in the maximum timeframe of regulatory approvals when considering costs i.e. there should not be a need to consider delay costs.

As noted above, more transparency and detail about delay costs should be provided. It remains unclear whether industry costs presented in the cost benefit analysis are lost potential costs or lost real costs, i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold.

The amount specified as the delay costs to industry are based on costs provided by the industry. Given the lack of detail provided, this is not independent or verifiable and we recommend that independent data is used and applied to real world applications

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Yes

Free text box, no character limit:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations. Previous efforts to engage with relevant stakeholders have been demonstrably inadequate or entirely lacking. Public health organisations have offered expertise several times but these offers have not been taken up.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

The Australian Government Guide to Regulatory Impact Analysis (2020) requires that data sources and methods used to calculate regulatory compliance burden are transparent, that any gaps or limitations in the data are discussed, and that assumptions are disclosed. We do not consider that the cost benefit analysis, as set out in the IA, meets those requirements. Inputs and assumptions that are provided independent of commercial conflicts of interest and are verifiable must be detailed. In particular, we note that the evidentiary basis for certain assigned costs and benefits to industry appears to be considerably less transparent and rigorous than that applied to the assessment of public health impacts.

The quantified outcomes of cost benefit analyses are likely to be influential to the perspectives of stakeholder groups, and particularly when results are presented to decision-makers. However, we have considerable concerns with the inclusions/exclusions, inputs and assumptions feeding into the current cost benefit analysis, as well as the framing and presentation of results. Given this, as well as our feedback on proposed reform components above, we do not consider that the outcomes of or conclusions drawn from the cost benefit analysis, as presented in the IA, can reliably be presented to decision-makers.

The current approach to the cost benefit analysis and framing of the options precludes an appropriate consideration of the relative costs and benefits associated with each component and for each stakeholder group. This is important given the actual outcomes reforms may lead to, and the purposes of the costs and benefits implicated, are diverse; the costs to public good of private benefits from measures to improve commercial outcomes, in terms of diet-related burden of disease and associated impacts on health, social and economic systems, may be considerable, and governments must be advised of these differential impacts to appropriately consider the implications. Widespread public health impacts and isolated, individual business impacts are not equal and should not be treated in the same way.

Finally, we note the summary statement that "Option 1 maintains high costs to industry and FSANZ to achieve public health benefits". We consider this an acceptable and valid outcome for government, given the potential threat to population health posed by the alternatives proposed.

We provide detailed feedback below. Without addressing these items, there is a significant risk that confidence in these analyses and their implications and uses will continue to be undermined.

Common to cost benefit analyses of both Option 1 and Option 2:

- Assumptions, inputs and the data and evidence underpinning them must be more clearly detailed with regard to both quantified and qualified costs and benefits.
- All benefits that are listed as quantified must report explicit figures, to facilitate assessment.
- What is meant by "public health benefits" should be clearly articulated, and short-term and long-term public health impacts should be distinguished.
- The impacts on diet-related burden of disease and associated health, social and economic effects of proposals, standards reviews and applications must be separately considered and quantified, including by stakeholder group (particularly consumers and governments). The IA notes this was "a broad generalisation given the diversity of proposals and applications processed by FSANZ"; this must be adequately explored and detailed.
- The analysis of public health impact must acknowledge harm from food regulatory system actions and activities, both actual (e.g. approved components/products or other permissions which have the potential to cause harm) or delayed (e.g. the lengthy period for development and implementation of folic acid fortification, iodine fortification and alcohol pregnancy warning labels), as well as any possible public health-based actions not undertaken by the food regulatory system (e.g. rigorous and mandatory compositional limits).
- It is inappropriate to suggest that all FSANZ's work has benefits to public health when applications are typically made for commercial reasons, standards reviews are inadequately described in the IA (i.e. there is no rationale stipulated for the assumption that each standard review results in a public health benefit), and some proposals may adversely affect health outcomes (e.g. proposed explicit permission to display added sugar and carbohydrate claims on alcohol, which has been identified by FSANZ as having the potential to mislead consumers, may lead to increased alcohol consumption and thus harm).
- Proposals and standards reviews must be separated in analysis and reporting as they may have different effects. We note with concern that under Option 2 "increase in public health benefits is generated from more standard reviews while continuing to deliver three proposals per year", given the claimed benefits from freeing/increasing resources to focus on proposals.
- It is assumed that resourcing limitations are preventing FSANZ from completing proposals in a timely way; however it is likely that the contentious nature of some proposals is also a significant factor, and this should be reported in the analyses.

- We note that the current figure applied for public health benefit is derived from an 14-year old outcome and is extremely limited and speculative besides. This proxy used to quantify public health impact may therefore not be appropriate. An alternative proxy measure with quantifiable public gains could be used (e.g. decreased consumption of alcohol by pregnant women and impact on alcohol-related harms).
- A unit cost/benefit from applications and from standards reviews also need to be distinctly set out, with the rationale detailed.
- It is difficult to agree that the food industry derives no quantifiable benefits from the current (and continuing) features of the food regulatory system, particularly as applications are typically made for commercial reasons.
- Claimed delay costs to industry must be better evidenced; "Sourced from industry consultations" is insufficient.
- The assumption that delay costs to industry from processing applications are passed on to consumers must be better tested, as there is no apparent reason to assume quicker resolution of applications would result in lower prices to consumers.
- New products introduced as a result of approved applications detract from sales and therefore revenue of other, existing products; a new product, regardless of whether it is required to be assessed by FSANZ or not, does not add to total demand for food.
- There are quantifiable benefits to FSANZ and governments more broadly of FSANZ's work regarding food safety and public health; it is difficult to agree that governments derive no quantifiable benefits from the current (and continuing) features of the food regulatory system.
- The assumptions underpinning Aboriginal, Torres Strait Islander and Māori food industry value add are "Based on current industry growth projections". That is, these projections are explicitly based on the current food regulatory system, and not the recently proposed reformed food regulatory system. Therefore, these benefits should be noted under Option 1. Any other potential impacts on this sector from proposed reforms are not mentioned. The sensitivity analysis is also insufficiently detailed to assist with evaluation of the impact of the assumed growth rate.
- It remains unclear whether and to what extent activities listed as currently occurring under Option 1 (Table 12), other than an increase to the number of standards reviews, would continue under Option 2. It is also unclear what "a subset of [FSANZ's] functions" refers to, and what functions are missing from Table 12.
- Extra funding independent of any proposed reforms is assumed for Option 2, without basis. This must also be included for Option 1, or removed entirely.
- A qualified cost to FSANZ, governments and the food industry must be a lack of confidence in the healthiness of the food supply.

Specific to cost benefit analysis of Option 2:

- It is unclear how quantified benefits for consumers and FSANZ are related and costed. For consumers, a quantified benefit is listed as: "As reforming standard-setting enables FSANZ to process more proposals and reviews, the associated public health benefit increases, the associated public health benefit increases, extrapolating to an additional AUD \$10.7 million (NZD \$11.4 million) in public health benefits per year". For FSANZ, quantified benefits include: "As streamlined standard-setting processes free up capacity and as FSANZ is resourced to undertake more reviews of standards, the number of proposals/reviews processed per year is estimated to increase by eight" and "An increase in FSANZ resourcing to support the development and implementation of all its components will create more sustainable funding arrangements for FSANZ to deliver public health benefits". These outcomes appear to be overlapping or at least very similar. Explicit clarification, including of how these differ and are separately counted, will be extremely important given how this would affect outcomes of the cost benefit analysis. It is also indicated that the number of proposals is not expected to increase. It is difficult to see therefore how the uplift in resources will make any improvement to the number or timeliness of proposals.
- The risk assessment applied in the assumptions for Option 2 must be detailed, and it should be clearly noted that this may or may not be relevant to outcomes of the actual risk framework implemented. We suggest that one example from "an application" to determine changes to processing time is insufficient for its assumption and broad application.
- The number of assumed proposals and standards reviews must be clearly distinguished, given the lack of clarity around what standards reviews may involve and the in-text note that it is anticipated only 3 proposals will continue to be completed each year. "As streamlined standard-setting processes free up capacity and as FSANZ is resourced to undertake more reviews of standards, the number of proposals/reviews processed per year is estimated to increase by eight" is unclear.
- As noted previously, we disagree that "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks", given the IA and FSANZ already acknowledge this role, and that it should be considered a cost to industry; the implication of this assumption is that FSANZ's actual, existing role to manage public health risks is a threat to the food industry.
- For reasons previously noted, a "risk-based approach" increases the risk of harm by introducing a less rigorous approach with fewer controls, and this is also noted in section 8 of the IA. It cannot improve public health as assumed in this cost benefit analysis. This risk and cost to consumers, FSANZ and governments must be quantified.
- As discussed previously, there are no mechanisms to ensure that "reforming standard-setting enables FSANZ to process more proposals and reviews", and the detail provided does not support this assertion. As such it is inappropriate to assume and incorporate increased public health benefits from this measure, also noting other concerns with relevant assumptions and inputs.
- The two points under "Unchanged benefits compared to Option 1" for quantified benefits for industry are listed as qualified benefits for industry in the cost benefit analysis for Option 1.
- As noted previously, it is inappropriate to assume additional funding independent of any proposed reforms; this must be excluded as it is equally valid for Option 1.
- The assumptions or evidence underpinning the claimed cost to industry "Removing paid applications may mean that industry can no longer reliably predict when they may take a product to market. This could increase costs associated with product development, inventory management, and marketing campaigns. An unpredictable timeline might also deter potential international food companies from operating in Australia" must be provided. Industry and international food companies will still be able to reliably predict when they may take a product to market, but they will simply no longer be able to expedite it. Any associated costs with product development, inventory management and marketing campaigns can be adequately managed as this still refers to known, maximum timeframes. As such this should not be considered a cost to industry.

Recommendation: The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

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Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations. Previous efforts to engage with relevant stakeholders have been demonstrably inadequate or entirely lacking. Public health organisations have offered expertise several times but these offers have not been taken up.

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

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We note that the combined impact of the proposals is, according to the current cost benefit analysis in the IA, to significantly increase costs for governments and consumers for no to relatively little benefit to those stakeholders, respectively, while halving costs and greatly increasing benefits for the food industry. This also significantly alters the Benefits Cost Ratio for each stakeholder group. According to Table 14 and 16:

- FSANZ – costs will increase by ~\$35m (+27%) and benefits will increase by ~\$112m (+503%). Benefits Cost Ratio increases from 0.17 to 0.80, from Option 1 to Option 2, a 4.8 fold increase.
- Other government – costs will increase by ~\$44m (+291%) and there are no benefits under either Option 1 or Option 2. Benefits Cost Ratio cannot be calculated.
- Industry – costs will decrease by ~\$35m (-54%) and benefits will increase by ~\$116m (from no benefits under Option 1). Benefits Cost Ratio under Option 2 calculated as 3.97.
- Consumers – costs will increase by ~\$68m (+944%) and benefits will increase by ~\$83m (+40%). Benefits Cost Ratio decreases from 28.64 to 3.84, from Option 1 to Option 2, a 7.5 fold decrease.
- Overall – costs will increase by ~\$112m (+51%) and benefits will increase by ~\$310m (+136%). Benefits Cost Ratio increases from 1.05 to 1.63, from Option 1 to Option 2, a 1.6 fold increase.

However, these are entirely predicated on the current inputs and assumptions. As noted above, we remain extremely concerned about these, particularly with regard to inclusions and exclusions and where inconsistencies may have been introduced. For instance, the extra costs to public health necessarily introduced by a framework that increases risk of harm would significantly alter these calculations; this is most concerning given the cost benefit analysis states that public health represents the main driver of benefits under Option 2. In addition, it is inappropriate to assume additional government funding for FSANZ independent of any reforms and to include this only in the analysis for Option 2, when the rationale for this and the reasons why this cannot be added to the analysis for Option 1 are unclear; this will obviously distort results.

We also remain concerned with the potential impact of unrealised but assumed benefits to FSANZ. That is, if FSANZ do not receive increased funding (from whatever source, as is stated to be required) and staff (as is stated to be required), it will continue to not be able to meet its current legislated objectives and functions and/or any new objectives and functions.

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

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The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1.

Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) has no application at all for Option 1 because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution strongly in favour of Option 2 with no real basis. In addition, the subjective assessment of whether Option 2 solves the policy problems has resulted in an inappropriately high total score for Option 2 under criterion 1.
- Many of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

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We note that the negative impact rating of policy problem 1 is inconsistent in the IA, with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support 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. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best. Sub-problem 1, Policy Problem 1

Option1: Option 1 could address Policy Problem 1- the confusion about how FSANZ should consider short-and long-term risks to health when developing is one that sits with stakeholders not FSANZ itself - the FSANZ Board have confirmed FSANZ role in long-term health risks. FSANZ simply needs to communicate this better and has the ability to do so under Option 1. As such this sub-problem has no negative impact.

Option 2: As above. Whilst the inclusion of a definition may address the unclear definition issue of this sub-component the more important element of this sub-component is 'how' FSANZ should consider short- and long-term risks to health when developing standards. There has been no attempt in Option 2 to include mechanisms for how FSANZ is to do this nor to separate out how FSANZ considers these risks. We would consider there is no resolution of this element of the policy problem.

Sub-problem 2, Policy Problem 1

The solution presented in the IA for the confusion about the factors to which FSANZ has given regard in its decision making is simply communication - this is equally available to FSANZ under Options 1 and 2 and therefore each option should have an equal rating for this sub-problem. There is no resolution of this policy problem under each option as no reforms are proposed.

Sub-problem 3, Policy Problem 1

The proposed changes merely add language into the Act in relation to Aboriginal, Torres Strait Islander and Māori Peoples, much like language already exists in relation to 'public health' and we do not consider that sufficient and genuine engagement and consultation has been conducted with Aboriginal, Torres Strait Islander and Māori Peoples to ensure that these changes are in the best interests of those groups. These words, do not in and of themselves result in commitment of government to Aboriginal, Torres Strait Islander and Māori Peoples, and respect for their culture and knowledge. We would consider this a minimal resolution of this policy problem, if any. Acting on the Tier 2 and Tier 3 solutions would make a meaningful difference and we strongly suggest these are included at this stage of the reforms.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Sub-problem 2 - we do not consider that Option 2 provides any reforms that actually remove barriers for Indigenous foods to be brought to market, it simply is the creation of a list of 'safe' traditional foods. These foods don't need any interaction with the novel foods provisions of the FSC and therefore the relevant importance and impact is limited. As such there is no resolution of this sub-problem in Option 2 and that ratings given to Options 1 and 2 should be the same.

Sub-problem 3 - Option 2 does not 'require' FSANZ to do any holistic reviews at all so there is no resolution of this sub-problem. Increased resourcing under Option 1 could equally have the same impact on holistic reviews and Options 1 and 2 should therefore be rated the same.

Sub-problem 4 - FSANZ already has the capacity to develop guidelines and codes of practice and as there is no suggestion that FSANZ is required to do these under Option 2 it provides no more resolution of this policy problem than Option 1. As such Options 1 and 2 should be rated the same.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should be 1.5-2 (moderate).

Sub-problem 1 - whilst the addition of additional skills will benefit FSANZ, open market nominations would not result in better, more efficient, effective decision making and we would therefore not rate this sub-problem as completely resolved.

Sub-problem 2 - decreases in funding could be resolved under both Options by changes to substantive funding arrangements to FSANZ. Under Option 2 cost recovery mechanisms could be used to address some of the deficit, this could partially resolve this sub-problem.

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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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

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- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used

to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

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The IA summarises that Option 1 was deemed on average much riskier than Option 2. As noted previously, it is inappropriate to report all proposed reforms under Option 2 as one package, given some, all or none of these components may be introduced and many of them do not require changes to the Act. The individual impacts of each component will be important to consider.

We suggest that this section is reassessed according to our recommendations below:

In section 8.2.2 it is stated that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major (consequence rating of 1). We strongly support this rating and note that we do not consider any other risks identified as consequential as these, i.e. no other consequences, particularly those which only potentially impact a small number of businesses that are required to interact with the applications process each year, should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, i.e. without legislative changes, and Option 2 doesn't necessarily resolve those risks while opening other, more consequential risks - there needs to be equal consideration of this when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of “confusion” should be rated as minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

- Identified risk: The FSANZ Act remains out of step with contemporary expectations and obligations to recognise Indigenous culture and expertise.

Consequences and likelihood are actually both minimal (3), given the limited engagement with Act by stakeholders and the public. Terminology in Food Standards Code could be updated to recognise Indigenous culture and expertise through routine Food Standards Code management at any time. Nothing proposed under Option 2 to address this.

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of “clarification” are both minimal (3), given it is acknowledged that FSANZ “should already” and is “already empowered” to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of Aboriginal, Torres Strait Islander and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst Aboriginal, Torres Strait Islander and Māori people.

Theme: reformed standard-setting

Option 1

- Identified risk: FSANZ's organisational capacity will continue to be used in a way that does not make best use of its expertise, as proposals and applications will continue to be processed in a manner agnostic to risk

We do not support the risk rating of major for this risk and recommend this is rated 2 (moderate). We support that the likelihood rating but note that the risk of this continuing under Option 2 remains high as it is not resolved by any of the reforms presented in the IA as there are no mechanisms proposed

to ensure the FSANZ better uses its expertise.

- Identified risk: Ongoing capacity constraints will reinforce an effective focus on processing applications, at the expense of proposals and other high-value work

We disagree that the consequence is high given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. The consequence and likelihood should therefore be rated as minimal/unlikely (3). This risk is not addressed in Option 2.

- Identified risk: Australia and New Zealand will continue to be markets that international food companies choose not to enter, given the high regulatory burden associated with amending food standards - particularly where safety has been established elsewhere.

No evidence has been presented that international food companies are choosing not to enter the ANZ market due to regulatory burden. Overwhelmingly products do not need to lodge applications to be introduced into the ANZ market so any impact of international food companies not entering the market as a result of this is limited in any event. Consequences and likelihood should both be rated minimal (3). Other hypothesised impacts noted are extremely speculative and not supported by evidence.

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- Identified risk: Nomination and appointment processes would continue to be relatively laborious endeavours and perpetuate the risk that the Board will not have the necessary skills to provide effective governance

We disagree that the consequence of this is moderate (2), it is minor (3). It is also not very likely (rating 3 rather than current 1) given current scope and flexibility for appointments.

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: The Board could be less efficient and well equipped to consider sectoral interests under new nomination arrangements

We support the risk rating for this risk.

- Identified risk: Expanded cost recovery mechanisms borne by industry could create new barriers to entry for businesses seeking to vary food standards, reducing accessibility of the scheme

Cost recovery methods do not inhibit engagement with FSANZ. We note the CBA analysis assumes any costs would be passed on to consumers, as such the consequence of this should be low (3 not 2) and the likelihood unlikely (3 not 2). Overwhelmingly products do not need to lodge applications to be introduced into the ANZ market so any impact of cost recovery mechanisms linked to applications is limited in any event.

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

- Identified risk: An industry-wide levy could contribute to regulatory capture

Any cost recovery mechanism risks regulatory capture, not just a levy, so this is a risk for all cost recovery mechanisms proposed in the IA. Cost recovery mechanisms that expedite applications (as under Option 1) are much more risky, as are paid applications as a whole (as under Option 2) as this only benefits big food who can afford to regularly participate in the application process. As such, the consequence and likelihood of this reform should be considered as moderate (2) at most.

- Identified risk: Imposing a food recall coordination levy could increase the risk of non-engagement with FSANZ by jurisdictional enforcement agencies, resulting in less well managed foodborne risks

We do not agree that the consequence of this is major and this risk should be rated (2-3), food recall is currently managed more than adequately and any indication that there is a serious widespread incident will be acted on immediately. We also think this risk is unlikely (3) as no jurisdiction will allow harm to come to people, industry and government from inaction.

Theme: improving system agility

Option 1

- Identified risk: Efforts to align policy and regulatory work across the system will continue to be frustrated

We support the rating for this risk but note that all reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. The likelihood for stakeholder confusion only remains high if FSANZ and FMM/FRSC continue to not communicate priorities and needs effectively.

- Identified risk: Inconsistencies in interpretation and enforcement will continue to be an issue, particularly for Australian businesses and enforcement agencies, generating undue regulatory burden

Consequences and likelihood demonstrably minor given cross-country penetration of products/companies and necessary jurisdictional-based approach to enforcement. We note that reforms proposed under Option 2 to address this are available to FSANZ under Option 1 also as they are operational in nature. We propose ratings of consequence (3), likelihood (2).

Option 2

- Identified risk: Greater collaboration across the system could put at risk FSANZ's independence, if not done well

Collaboration across the system is already being undertaken with adequate checks and balances. The reforms proposed under Option 2 are available to FSANZ under Option 1. As such we suggest a likelihood rating of 1 as this collaboration is sure to continue.

- Identified risk: Systematising data collection and curation of databases work could actually create perverse incentives for data custodians to share their data

The consequence of this would not be dissimilar to current arrangements and we suggest a rating of 3. This is very likely however and should have a likelihood rating of 1 - this has been demonstrated by slow progress on combining jurisdictional databases and slow uptake of Branded Food Database and HSR 5 year review.

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Yes

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The impact on the burden of disease of any proposals, as well as associated costs to individuals, governments and the economy, will be critical to understand. However, this must be rigorously assessed; significant expertise is available across Australia and New Zealand to support this.

As noted throughout this submission, the costs, benefits, impacts and risks of components must be assessed individually and reported by stakeholder group individually to facilitate an appropriate consideration of the relative merits of each component.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

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Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding. Governments should be adequately funding FSANZ to perform its functions, regardless of any changes to the FSANZ Act itself. We strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system. Noting that it is out of scope, but also available under the status quo, it is inappropriate to assume additional core funding for FSANZ under Option 2 in the IA.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This is a 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes. However, taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback and suggestions from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2

and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, FSANZ's role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We do not agree with all the characterisations of the feedback the public health and consumer community has provided over the past three and a half years of this Review as presented in section 7. We also disagree with the statement made in section 7.1 of the IA, that “the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021” and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement, however with no additional reforms to protect and promote public health and consumer interests. Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:53:49

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Emlyn Simmie

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Healthcare Product Specialists

Which sector do you represent?

Other (please specify)

Other: :
Food Regulatory Consultant

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::
[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:

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Prefer not to respond / I don't know

Additional comments (optional):

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?

Prefer not to respond / I don't know

Additional comments (optional):

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Prefer not to respond / I don't know

Additional comments (optional):

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?

Prefer not to respond / I don't know

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Yes

Free text box, no character limit:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Prefer not to respond / I don't know

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:

HPS supports the notion to include risk based frame work in the handling of proposals and applications with in the Food Standard Code (FSC).

In HPS view, a risk based approach presents an opportunity to the food industry to have particular applications fast tracked through the system "if" the application is considered low risk, has a previous approval from an international established food regulatory body, or uses technology, processes, ingredients that are generally considered low risk.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

HPS agree with those examples provided in Appendix D of the Impact Analysis.

HPS also recommends that FSANZ utilise existing approvals for substances (for example) from international established food regulatory bodies such as Codex, JECFA, USDA, EFSA, UK Food Standards Agency, Health Canada etc. This could help to fast track proposals and applications which would promote access to ingredients, processes, technology, regulatory reforms and health claims. In HPS view, this has the opportunity to directly support the Australian food industry and promote research and development in this space.

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:

HPS support risk based framework, assuming that a risk based framework encourages the fast-track of applications for the food industry, reduces time required for FSANZ to provide assessment, and is not a bottle neck inhibiting growth and development in the food sector.

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:

HPS support risk-based assessments from international bodies for ingredients, health claims, and technology, assuming the risk based assessments fast tracks applications for the food industry, reduces time required for FSANZ to provide assessment, and is not a bottle neck inhibiting growth and development in this space. In HPS view, the risk based approach is likely to promote innovation by increasing access to ingredients, health claims which promotes innovation in the food sector.

For example in P1010 - Consultation paper two - Nutrition and Health Claims, FSANZ proposed to adopt those authorised EU health claims as pre-approved health claims for sports foods. In HPS' view the adoption of the EU sports health claims, enables the sports food sector further improved compliance, while also promoting further opportunities for innovation and development.

HPS note some risk resides that different jurisdictions may fundamentally classify food product differently, i.e. formulation meal replacements, sports foods or electrolyte products. Thus, while ingredient assessments may be easy to systematically adopt, food classification assessments may require further evaluation by FSANZ.

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:

HPS agree with the proposal, see comments in Component 2.2.2 above.

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:

HPS agree with the proposal, see comments in Component 2.2.2 above.

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:

HPS agree with the proposal, see comments in Component 2.2.2 above.

HPS notes that the referenced harmonised bodies are strictly western countries, HPS encourages FSANZ to look at those countries closer to home within the Asia Pacific region as well as the those named in component 2.2.2 (page 52 of the Impact Analysis).

What would be the impact of introducing new pathways to amend food standards for you?

Positive

Free text box, no character limit:

HPS supports the introduction of new pathways to amend food standards via a harmonised approach.

In HPS view, this offers the Australian food industry greater access to new ingredients and supply chains which supports innovation within the Australian food sector.

Further this also provides greater clarity for businesses developing products across multiple borders between AU / EU / USA / UK / Canada.

Overall HPS see the introduction of new pathways as a positive change to the FSC.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

What would be the impact of streamlining decision-making arrangements for you?

Prefer not to respond / I don't know

Free text box, no character limit:

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Yes

Free text box, no character limit:

In HPS view, it is likely that some of this information already exists within the Food Industry. HPS are aware of a number of raw material suppliers of traditional food ingredients (such as desert lime, Kakadu plum, Davidson plum, wattle seeds etc...) that promote the sale of their ingredients with analytical testing attached.

HPS encourage FSANZ to publish and list of traditional foods and ingredients and include such foods / ingredients within the Australian Food Composition Database, enabling easy access to the data for immediate use by the food industry.

In HPS experience, we have note a trend in brand (and consumer) awareness of Australian traditional foods, HPS work with a number of clients who currently are using a variety of Australian native raw materials in a variety of products available within the food industry. If nutritional and compositional assessment of traditional foods was made available to the public (and regulatory experts such as HPS), HPS believe this would absolutely increase innovation and use of traditional foods by the food industry as a whole.

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?

Yes

Free text box, no character limit:

Yes please see response to component 2.2.4 above.

The development of guidance materials and safety assessments of traditional foods and traditional ingredients will support the safe use of traditional foods by the Food Industry.

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:

In HPS view, FSANZ undertaking on-going reviews of the FSC, food standards enables the Code to be up to date with the current mark a) use of the code, b) market trends and c) food industry compliance.

For example, Standard 2.9.4 Formulated Supplementary Sports Food (FSSF), in HPS view is outdated, the use of Division 3 Particular formulated supplementary sports foods (i.e. High carbohydrate supplement, Protein energy supplement, Energy supplement) has no bearing on the products being produced by industry and purchased by consumers. The specific sports foods (per standard 2.9.4 - division 3) are not produced by industry as the consumer purchasing FSSF products has no interest or desire for a high carb supplement / protein energy supplement.

A low carb high protein supplement option would be more appropriate from consumer preference as well as promote healthy food choices for consumers.

In summary, HPS support the notion for FSANZ to undertake regular reviews of the FSC.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Yes

Free text box, no character limit:

HPS support the notion that the Code of Practice and regulatory guidelines are an asset to the food industry to ensure the intentions of the Food Standard Code (FSC) are accurately implemented by industry. In HPS view, this reduces the misinterpretation of the FSC and reduces ambiguity of the FSC while promoting food compliance.

Currently Industry relies on other regulatory bodies within AU such as the ACCC to assess compliance risk where no clear set guidelines are in place.

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:

HPS have experienced ambiguity within the FSC specifically Standard 2.6.2, Division 4 Electrolyte drinks and electrolyte drink bases. Per 2.6.2-16(2)(a) the food has an average osmolality of 200–340 mOsmol/kg.

Osmolality is not defined within the FSC, the calculation to determine osmolality is not provided. HPS note other calculations and definitions of a similar nature are detailed within the FSC.

Additionally, in HPS's view, labelling requirements in Standard 2.9.4 could be improved, Standard 2.9.4—7 Prohibited representations states:

"Unless specific permission is given in Division 3, the label on a package of formulated supplementary sports food must not include an express or implied representation that relates any property or proposed use of the food to enhanced athletic performance or beneficial physiological effects."

The use of the prohibited representation (2.9.4-7) is unclear in its intended use, the industry seeks clarification around its intended use and proposal. In

HPS's view the prohibited representation does not directly apply to the Food Standard code within the context of Standard 1.2.7 and Schedule 4 Nutrition, health and related claims. The industry is unclear if the prohibited representation applies to claims that are deemed therapeutic in nature or applies to those health claims reflected in Standard 1.2.7 and Schedule 4.

Should the FSC provide a code of practice or guideline in relation to St.2.6.2 and St 2.9.4, it would ensure both brand compliance and efficacious product for consumers. This too would aid enforcement agencies in surveillance of non-compliant products.

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:

Yes, see comments above, component 2.2.6

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:

HPS agree with the notion that introducing Code or Practice and guidelines would be positive for the food industry. See comments above, component 2.2.6

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Prefer not to respond / I don't know

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Negative

Free text box, no character limit:

HPS reject the idea that removal the expedited pathways for applications would have a positive impact on the food industry. In HPS experience the use of an expedited pathway encourages innovation, growth and development of the food industry. Removing the expedited pathway has the potential to inhibit growth of the Australian food sector and be a burden for industry.

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:

In theory HPS supports the notion of an industry wide levy for those top 5000 food businesses in Australia.

However, HPS question how FSANZ will determine which companies will meet the criteria for the top 5000 food businesses in Australia?

In HPS view there are many business that are not solely food business who also sell cosmetics, medicines, and other commodities. Additionally, how will FSANZ differentiate between food raw material suppliers and those businesses who sell finished product. HPS urge FSANZ to take this into consideration.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

In HPS view compulsory fees to "all applications" has the potential to reduces opportunities for innovation and growth for small to medium food companies especially considering the increases financial pressures for those small food businesses / start ups in the food space. We see this as a burden for industry.

The requirement to outlay additional funds and fees for applications could reduce innovation and development within the Food sector.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

No

Free text box, no character limit:

In HPS view, imposing a levy for food recalls adds additional financial burden to business already dealing with the financial pressures of recalling product at huge financial cost and stress.

In HPS opinion, this also has the potential to add risk to consumers, as some companies may choose not to notify FSANZ if a recall is needed, if additional fees for a product recall are imposed.

HPS see this as a potential risk for consumers and a large burden for industry.

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Annual Levy

Free text box, no character limit:

In HPS view, imposing an annual levy to jurisdictions is a fair approach to support the food industry.

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

HPS agrees with the notion for FSANZ to assume the role as a database custodian in relation to information held by FSANZ such composition / nutrition / food safety databases, as well as the Health Star Rating (HSR) composition information. HPS encourage FSANZ promote access to such data to the wider regulatory community, such as food regulators, enforcement agencies and food consultants (such as HPS).

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Prefer not to respond / I don't know

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Yes

Free text box, no character limit:

HPS support the introduction of Statement of Intent into the FSC. In HPS view the inclusion of such statements ensures that the FSC are correctly interpreted and implemented by the Food Industry, this too helps food businesses ensure compliance.

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:

HPS agree with the notion that Statements of Intent benefit the food industry as well as enforcement agencies. For example, HPS have encountered inconsistent interpretation of legislation by DAFF in their review of imported product.

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:

HPS strongly support the notion for FSANZ to develop, update and maintain industry guidelines. In HPS view this could positively impact both food industry, food consultants (such as HPS), food enforcement agencies, ensuring consistent interpretation of the FSC are implemented by the Food industry. This would result in improved compliance of food products, as intended by FSANZ.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Prefer not to respond / I don't know

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Prefer not to respond / I don't know

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

No

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Prefer not to respond / I don't know

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 16:56:43

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Lucy Westerman

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Chronic Disease Prevention Alliance

Which sector do you represent?

Public Health

Other: :
Australian Chronic Disease Prevention Alliance (ACDPA)

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:

ACDPA members believe that the key concern with the current system is that the public/consumers are not effectively protected from short- and long-term health impacts and preventable diet-related conditions/NCDs (including cancers, heart disease, kidney disease, stroke, type 2 diabetes and other related conditions such as hypertension and obesity). Despite this being a primary objective of FSANZ, it is not mentioned in the IA at all and as a result the methodology completely fails to factor this in. The current approach seems to fail to identify and prioritise priority policy problems related to diet related NCDs.

We support incorporating a definition of public health to minimise confusion, but this is insufficient. To help address the issues and gaps in the methodology, we propose that a Public Health Test be incorporated into the Act.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

We recommend the Impact Analysis consider food system security and sustainability, and risk of negative externalities, given the food regulatory system's important role in safeguarding food safety and security.

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:

ACDPA members share the concerns of other public health groups (The George Institute and Food for Health Alliance) regarding the ranking of policy problems.

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
 - food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),
- as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards. This change is important but is not likely to result in any meaningful changes to FSANZ's work and approach to public health, as its role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. What is missing from the IA and the reform options is *how* this will be done. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. ACDPA strongly recommends the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can also be alleviated by better communication by FSANZ of its consideration of short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost. I

Recommendation: The Act is amended to include a definition of public health as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Legislative clarity about FSANZ role in long-term risks to health (including preventable diet related conditions and diet related risk factors for them) when developing food standards would be positive.

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We suggest that s18(2) of the Act is amended to ensure that FSANZ makes decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is achieved.

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:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

We note the program of work regarding six concepts to recognise Indigenous culture and expertise, is being proposed by FSANZ. It is important for FSANZ to commence the co-design project they have outlined in this program of work (Figure 6) at Tier 3, to guide and support the work outlined in Tier 1 specifically relating to the Act, and in the Tier 2 work. The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

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:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system. We recommend that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi are referenced directly in the Act, to ensure accountability to the rights of indigenous peoples in the application of the Act. Alignment with the approach taken in Pae Ora (Healthy Futures) Act 2022 as to how to give effect to the principles of The Treaty of Waitangi is supported, but we note that the Māori language version of the Treaty, Te Tiriti o Waitangi, is more appropriate.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not be sufficient to ensure that the gap between the objectives of the Act, and the practical implementation of it in food standards is addressed.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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 vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

ACDPA supports the recommendation put forward by other public health groups for amendments to be made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and making decisions on proposals, applications, or standard reviews. These

considerations would set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

ACDPA recognises that a risk-based framework could present both opportunities and risks, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

From the information provided, the risk-based framework does not appear to produce an equivalent approach for decisions that would impact public health compared to industry. It appears from the IA (including details in Appendix D) that all public health decisions would be assessed as 'high risk' whereas some industry/commercially driven decisions would be assessed as 'low risk'. This would mean that commercial decisions can be made more quickly, without public scrutiny, including assessment of risk and provision of evidence. Meanwhile, public health related decisions would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer. The overall likely outcome of this is to worsen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

ACDPA supports additional consultation on the risk-based framework. This should commence immediately and be developed alongside the Act review, and focus on

- * The risk criteria and assessment matrix
- * The organisations whose assessments would be used as basis for minimal assessment approach
- * What outcomes would be expected for public health from such an approach

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The Public Health Test is the criterion; and then the risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on the decision-making process and where the risk assessment will fit within that; delegation for risk assessment decisions; communication and appeals mechanisms.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

No

Free text box, no character limit:

There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.

Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted

bodies like the World Health Organization are included.

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:

If FSANZ were to recognise international standards automatically, they should be harmonised where there are ideal outcomes for public health, not standards which would enable expansion of the market for ultra processed/nutrient poor foods.

Lack of detail about the practical application of this approach makes it difficult to assess its suitability, and would require further detail and consultation.

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:

There appears to be no intention for the minimal check pathway to apply to proposals - only for applications. We are concerned that new pathways may remove public and public health consultation and increase prioritising commercial decisions, with limited scrutiny through the decision process, which would undermine the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

From the information available, new pathways could remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step, limiting opportunities for independent scrutiny. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

Limited information provided suggests that the new pathways would not deliver broad public health benefits. Further information on applications is necessary to better consider the risks and benefits of this approach.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

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:

As noted previously, there is no evidence that new pathways to amend food standards would apply to public health measures, rather they currently point to these new pathways only being for commercially driven decisions leading to a greater availability of unhealthy foods on the market.

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

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:

Insufficient information has been provided to support this option at this point in time.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

The Public Health Test (detailed in component 2.1) should be applied to assess risk.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test, then low-risk decisions could assist in streamlining decision making processes, delegation and delay reduction, while ensuring current processes are followed for decisions that are not low risk. However, there is insufficient information regarding the risk framework at present to identify the impact of streamlining on public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Prefer not to respond / I don't know

Free text box, no character limit:

We recommend FSANZ consult specifically with Aboriginal and Torres Strait Islander and Māori people and experts to understand their needs and wants from the food regulatory system.

Without meaningful consultation there is a risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

With the current level of information provided, we cannot agree as to whether this suggested development would help facilitate safe entry of traditional food to market.

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:

We recommend FSANZ consult specifically with Aboriginal and Torres Strait Islander and Māori people on this point.

Without meaningful consultation there is a risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

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:

Additional resourcing should be irrespective of the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

We recommend clear criteria for reviews, and that the Act be amended to include statutory timeframes for standard reviews (3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM), including clear criteria established for how and when standard reviews will be undertaken, in order to support FSANZ’s primary objectives as outlined in section 3 of the Act. There may be exceptional cases where evidence takes longer to gather.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this. Most effective food and nutrition policies around the world involve legislative and regulatory approaches alongside best practice design, monitoring and enforcement, and protection from industry involvement which can dilute impact and outcomes.

See:

* Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

* Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

ACDPA notes that the reform options in the IA will not result in more proposals being progressed; the summary of Option 2 of Section 6 of the IA notes the FSANZ will continue to “deliver three proposals per year”. In addition, the reform options in the IA do not ensure that proposals are processed in a more timely manner.

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms. This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

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:

ACDPA supports amending the Boards' skill composition requirements to strengthen good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created. This will help to increase knowledge of Indigenous food and culture within the FSANZ Board (as is Tier 1 in Figure 6), by ensuring that decisions that impact First Nations and Māori people, are being made by members of their communities. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture. It is not appropriate for board members to be deemed knowledgeable on cultural matters when they themselves are non-Indigenous.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

ACDPA does not support changing the current nomination process to an open market one. We strongly oppose any decision that may reduce the number of public health positions on the board.

With limited detail as to the practicalities of implementing this amendment, we consider that an open market process risks reducing public health positions on the board, and an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Removing expedited pathways would ensure there is a level playing field for all those making applications. Expedited applications pose a risk of regulatory capture and a pathway for larger industry actors to have applications processed ahead of the queue.

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Positive

Free text box, no character limit:

We note that funding is an ongoing issue for resourcing of FSANZ's operations and meeting its objectives. An industry wide levy would strengthen ongoing financial viability 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:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees may not result in a level playing field for all of industry and may increase the risk of industry capture. Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ. We also reiterate that there should not be an option to expedite applications under any fee structure.

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:

We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a *minority* funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. We do not support cost recovery from industry initiated entrepreneurial activities, to protect FSANZ's independence.

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Other

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

ACDPA supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

ACDPA recommends the Public Health Test (detailed in response to component 2.1) be used to guide prioritisation of all FSANZ's work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings, this should be continued. These mechanisms are all already in place and available to FSANZ under Option 1 and any enhancement of them is available under both options.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Better resourcing would assist FSANZ to undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Yes

Free text box, no character limit:

ACDPA supports this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry, however we are concerned about the potential administrative burden on FSANZ of this function, and would not want this function to undermine FSANZ's progressing of proposals and other essential activities.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. Food expertise of First Nations and Māori peoples should be recognised, and we support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system is inclusive of diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

To date this consultation has not been sufficient in reviewing the Act with Indigenous perspectives in mind. We recommend a deeper consultation process with First Nations and Māori groups to determine their specific requirements and that FSANZ considers co-developing culturally tailored compliance guidelines. This process will require a significant investment in time and resources to develop relationships with the most appropriate First

Nations and Māori stakeholders.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

ACDPA recommends that cost benefit analysis reflects public health costs and benefits and the design, conduct, analysis and interpretation should reflect this.

We recommend Cost Benefit Analysis consider and reflect public health costs and benefits, including to the public/individuals/consumers, and governments, with methods and assumptions clearly articulated. We strongly suggest Cost Benefit Analysis include:

* Implications for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) -

* clear statement on what is meant by 'public health benefits', is this a decrease in non-communicable disease (NCD) incidence or progression, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits (safety, mental health, cognition) and long-term public health benefits (chronic disease prevention and delay) should be set out.

* impact of short (primarily safety) and long-term (chronic disease) social and economic benefits (for example to individuals, health system, government/economy).

* Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We cannot comment on data on costs of delays to industry, however note that this would be useful information for analysis.

However, delayed profits to a for profit industry should not be considered equivalent or prioritised over the health, social and economic costs (externalities) borne by individuals and the health system and government.

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

Any other comments regarding the Option 1 information in the Net Benefit section?

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Yes

Free text box, no character limit:

ACDPA recommend Cost Benefit Analysis consider and reflect public health costs and benefits, including to the public/individuals/consumers, and governments, with methods and assumptions clearly articulated.

We strongly suggest Cost Benefit Analysis include:

- * Implications for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) -
- * clear statement on what is meant by 'public health benefits', is this a decrease in non-communicable disease (NCD) incidence or progression, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits (safety, mental health, cognition) and long-term public health benefits (chronic disease prevention and delay) should be set out.
- * impact of short (primarily safety) and long-term (chronic disease) social and economic benefits (for example to individuals, health system, government/economy).
- * Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- * How a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

We align with the analysis of other public health stakeholders including The George Institute and Food For Health Alliance. The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented.

The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.

- It should not be assumed that every application has a consumer benefit.

- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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:

Based on the current information and methodology, the results weigh heavily towards option 2. We also note that the limitations in the policy problems themselves (see responses in section 3), limit this assessment.

We note that some of the reforms suggested under Option 2 would already be available to FSANZ under the status quo and should therefore not receive a positive rating where they are considered for Option 2 (see our response below for more details).

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

We note that the negative impact rating of policy problem 1 is inconsistent in the IA with both a rating of 3 (high) and 2 (moderate) noted on page 89 of the IA. We refer to our response in Part 3 above and note that we support a negative impact rating of 3 (high) for policy problem 1.

ACDPA defers to the The George Institute and The Food for Health Alliance's analysis (see below) for further information on ratings assigned to the sub problems.

Option 2 is given a rating of 3 - majority resolution - for solving Policy Problem 1. We would argue that the rating should be 0 (not-at-all) or 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 2. We would argue that the rating should be 1 (low) at best.

Option 2 is given a rating of 2.5 - moderate-high resolution - for solving Policy Problem 3. We would argue that the rating should 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. We would argue that the rating should be the same for both options as the proposals under all three sub-problems for Options 1 are operational and FSANZ has the ability to undertake them under current arrangements. As such both Options 1 and 2 resolve this sub-problem equally and 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:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

• Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2.

We suggest that this is reassessed according to consideration of other risks, per recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated. This does not reflect the market in which vast numbers of products enter the market each year and only a very small percentage of them require approval via applications through FSANZ.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

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:

See text box response to next question

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of this comes from government funding of some source. Governments should be adequately funding FSANZ to perform its functions. We would strongly suggest that one of the key enablers for FSANZ is a commitment from all governments to better fund FSANZ to undertake its functions, which could be undertaken under the status quo. We acknowledge that this is out of scope for the FSANZ Act Review and support the suggestion that FSANZ's substantive funding arrangements should be considered as part of the broader work in relation to the joint food standards system.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health

and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests.

Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 18:20:38

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Dr Michael Lindsay

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

Department of Health, WA

Which sector do you represent?

Government

Other: :

What country are you responding from?

Australia

Other: :

If we require further information in relation to this submission, can we contact you?

Yes

What is your email address?

Email address::

Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

Free text box, no character limit:

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Prefer not to respond / I don't know

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:

Point of clarification regarding Sub-problem 3 – inconsistencies are unrelated to the FSANZ Act, rather associated with the respective food legislation and agency delineation of food regulatory functions within some States and Territories. The Food Acts adopted in Australian jurisdictions, while largely aligned to the Model Food Provisions, have been subject to the political process with each jurisdiction in the process of enactment, as well as where there has been a community need that food laws have been identified as the relevant instrument to address this need. This has resulted in some variations across the Food Acts between States and Territories. The example provided about eggs illustrates this. Again, this is not a FSANZ Act issue, as the inconsistency sits firmly with the States and Territories.

Additionally, in some States, such as Victoria (in which the example in the FSANZ Act IA is used as an example), has multiple agencies involved in food regulation, whereas in a State like WA, the responsibility for the WA Food Act 2008 (WA Food Act), is afforded to the CEO of the DOH. While local government is an enforcement agency under the Act, overall responsibility for the Food Act sits with the DOH.

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):

The definition of 'protection of public health and safety' within the Act could be clarified to be in line with the current policy guidance.

...'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.' (p49, Impact Analysis Paper)

The World Health Organization defines public health as 'the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society'.

The definition of public health used by FSANZ reflects that of the leading global health organisation, highlighting the words 'prolonging life and promoting health through the organised efforts of society'. The definition is fit for purpose for demonstrating the role of the food system in protecting and promoting the health of all Australians and New Zealanders. The definition should be included in Section 3. of the Act (Object of Act) because the promotion of long-term health is absent from this section.

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?

Yes

Additional comments (optional):

The definition (above) is aligned with Section 18. of the Act, that is, point 1. and point 2(a), and are prefaced as the 'High Order' Policy Principles for each Policy Guideline.

1. The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:

- (a) the protection of public health and safety
- (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
- (c) the prevention of misleading or deceptive conduct.

2. In developing or reviewing food regulatory measures and variations of food regulatory measures the Authority must also have regard to the following:

- (a) the need for standards to be based on risk analysis using the best available scientific evidence.

The High Order Policy Principles together with the specific content of each policy guideline is integral for ensuring public health is the foundational element of the review and assessment of all applications and proposals.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Having the definition of public health (above) included in both Section 3. and 8. would importantly serve to strengthen the element of public health within 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?

No

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

The issue is not about how FSANZ communicates for these guidelines, but rather that the Food Regulation Agreement (as amendment) 3(e) requires FSANZ to 'have regard to' the Ministerial Policy Guidelines, it does not require FSANZ to comply with these guidelines. Noting that all Ministerial Policy Guidelines have undergone full public consultation and been subject to the Office of Impact Analysis (formally Best Practice Regulation) prior to being enforced by Food Ministers.

The example provided illustrates this, such that the Ministerial Policy Guidelines for Infant formula and infant formula products, states (j) "Substances subject to pre-market assessment for use in infant formula and follow-on formula should have a substantiated beneficial role in the normal growth and development of infants or children, or a technological role, taking into account, where relevant, the levels of comparable substances in breastmilk. A substance's role in normal growth and development is substantiated where there is appropriate evidence to link the physiological, biochemical and/or functional effects of the substance to specific health outcomes for infants, in infancy or childhood. Particular caution should be applied by the Authority where such links are less clear". In recent times, there have been applications for certain nutritive substances that have been approved by FSANZ, where the FMM raised concerns that Specific Principle (j) of the Ministerial Policy Guidelines did not seem to have been demonstrated by the Applicant (s) and within the FSANZ assessment and approval process.

A recommended option would be for FSANZ to be required to comply with Ministerial Policy Guidelines, rather than just have 'regard to' these Guidelines.

In summary, FSANZ already communicate the reasons for their decisions on food regulatory measures. However, these reasons are not always consistent with the Ministerial Policy Guideline in place for a standard. This is where the point of disharmony exists.

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:

DOH supports the Act reflecting modern language that is consistent, appropriate, and inclusive.

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Yes

Free text box, no character limit:

Adoption of a risk-based framework would likely provide FSANZ with more flexibility in handling changes to the Food Standards Code.

However, in doing so, care would need to be exercised in establishing this framework, to ensure the protection of public health and safety is maintained.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

Consideration of this requires further canvassing and should be subject to full policy development and consultation process.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Neutral

Free text box, no character limit:

State and territory enforcement agencies already utilise a risk-based framework for the classification of food businesses, based on the risk of the food and the handling activities within the operation of the food business. This enables enforcement agencies to appropriately allocate time and resources to those businesses where there is the highest risk. The Model Food Provisions are outcome based, focused and to implement legislation, via the Food Acts in various jurisdictions, how risk is managed throughout a business is as important as the inherent risk of the food itself.

For FSANZ the issue is broader: not only is there the risk of the food, in terms of food safety a consideration, and the activities associated with producing the food, but also there are risks associated with the intended population groups for the food, the overall contribution the food (group / commodity) makes to overall human health and consideration of how the food falls within or outside of broader public health policies and objectives. In other words, the risks FSANZ are required to consider in prioritising its work, are complex. Additionally, there are Trade and international agreements and obligations that FSANZ must consider.

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:

FSANZ accepting risk assessments from overseas jurisdictions is considered reasonable in principle. It is important however for the dietary consumption/patterns of the Australian and New Zealand population, including vulnerable population groups, to be considered in the context of overseas risk assessments. Consumption patterns between countries can be significantly different. Risk assessments should only be accepted from trusted partners with the appropriate level of scientific expertise, in line with condition set down by FSANZ in regulation and/or regulatory policy. In addition, care needs to be taken not to adopt risk assessments where they may be vested interests such as market expansion to other countries. There may be differences in dietary patterns between Australia / New Zealand populations overseas countries. Care would need to be exercised in blanket recognition of international standards for this reason.

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

It may streamline processes and reduce the resource load for FSANZ to undertake other aspects of the standard development process. However, there may be differences in dietary patterns between Australia / New Zealand populations overseas countries, so the risk may not necessarily be the same. Care would need to be exercised in blanket recognition of international standards for this reason.

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?

Prefer not to respond / I don't know

Free text box, no character limit:

While Appendix D provides a case study example of what would constitute 'low risk' and shortens the timeframe in which FSANZ would consider an application falling within this category. It is unclear as to how this would reduce the impact on FSANZ resources. Furthermore, care needs to be taken to ensure that public health and safety is not compromised, in an endeavour to improve efficiency.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Prefer not to respond / I don't know

Free text box, no character limit:

Not in a position to comment in the absence of this work being explored more fully and subject to its own policy development and public consultation process.

Side note: Removal of the premarket assessment and approval process for high-level health claims, is inconsistent with the Ministerial Policy Guidelines and any decisions to this effect would require FMM decision.

What would be the impact of introducing new pathways to amend food standards for you?

Prefer not to respond / I don't know

Free text box, no character limit:

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

No

Free text box, no character limit:

The current decision-making arrangements are clear and transparent with all FSANZ notifications to FMM requiring a decision within the prescribed timeframes.

It would be useful to further understand the FSANZ challenges both administrative and technical with the current arrangements and how these impact on business delivery and organisational outcomes.

There are simple examples such as minor editorial amendments to the Code where approval by the FSANZ Board or Ministers is not necessarily required and could be delegated to other suitable decision makers. The principle of a risk-based approach to decision making is best practice and there is an opportunity to explore further how this may be included across the Food Regulatory System including at the highest level for FSANZ/FMM. It is however important to maintain rigor in decision-making and ensure processes for risk categorisation are well understood and agreed.

It should be noted that there is likely to be a degree of variation across jurisdictions for their risk appetite. Changes in current arrangements will need to have some flexibility for jurisdictions also in that those who retain a lower risk appetite can seek a higher level of authority for decision making.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

Further work is needed to explore risk factors, but these for example could include – public health risk, evidence available for assessment, vulnerability of the population impacted by the decision, new technology/genetic modification.

What would be the impact of streamlining decision-making arrangements for you?

Neutral

Free text box, no character limit:

From a WA perspective any proposal would still need to be comprehensively assessed and a briefing developed for the decision maker.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Consistency with similar levels of decision making in other health areas and departmental delegation schedules.

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?

Yes

Free text box, no character limit:

A one-off investment by FSANZ to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments which would facilitate entry of traditional foods to market.

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?

Yes

Free text box, no character limit:

FSANZ development of further guidance materials on how traditional foods can be assessed for safety could assist entry of traditional foods to market. However, the main limitation of these type of documents would need to be taken into consideration, which is the fact that accurate food safety assessment requires a case-by-case analysis. To ensure that a food product is safe, it may need to be tested for various biological and chemical contaminants like oxalic acid, cyanogens, saponins, alkaloids, etc. In cases where a particular compound in assessed food is potentially harmful (e.g., natural toxin) a method of traditional versus modern processing, the quantity and frequency of intake would also determine the safety status of the product. Finally, large food businesses would not have a problem to pay and to follow toxicologist advice, but it would be a medium and a small food business who would struggle to validate individual safety status of their product(s).

In conclusion, developing guidance materials would be beneficial as an interim solution, however, the ultimate goal should be to update Food Standards Code to be able to address various current challenges related to Australian traditional foods, such as:

- o Plant identification issues, which would be helpful, particularly in case of mixtures of species, where some of them may have toxic properties (e.g., Solanum species).
- o It should be stated that Indigenous preparation of the food had involved extensive detoxification processes. Therefore, Food Safety Programs (FSP) should be considered for individual species, that should address handling and processing hazards.
- o Labelling requirements should be considered, that may include botanical and common name with suggestions for suitable quantities used per meal.
- o Biological contaminants (e.g., fungal pathogens like aflatoxins).
- o Allergenic properties, and
- o Chemical pollutants (e.g., heavy metals).

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:

FSANZ should be adequately resourced to undertake regular, holistic reviews of food standards. However, the timeframe in which a holistic review is required would need to be evidence-based, reasonable and not result in uncertainty in the regulatory environment for food businesses and/or regulators.

In addition, the requirement for a standard to be reviewed should be based on need i.e., the availability of evidence to support the review.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

In considering, a requirement of the FSANZ Act to undertake regular holistic reviews of food standards, it is important at a practical level that the timeframe in which a review of a standard is required matches FSANZ's capacity and resources.

It would be important in including provisions for reviewing a food standard, that the period of time by which, or after which, a standard must be reviewed, be achievable and accommodate for earlier review of food standards based on risk and evidence. In the WA Food Act 2008, the requirement for review of this legislation is 'after five years', rather than by a certain date.

Conditions of the need for a review should also be a consideration.

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:

A Code of Practice, unless adopted under the Food Standards Code, or within State and Territory Food Acts, is problematic for regulators, from a compliance and enforcement perspective. While a Code of Practice may assist industry with adopting a best-practice approach to implement the Food Standards Code, these do not replace the need for the actual requirements to be specified in the standard of the Food Standards Code. Regulators require this to be the case, for compliance and enforcement purposes. While many food businesses may adhere to a Code of Practice, there are always some that will not follow this, and as such regulators would require key elements and criteria within a food standard, in order to require compliance, and take enforcement action, if or as needed.

On the other hand, the user guides previously produced and published by FSANZ, were a well utilised tool for both food businesses and regulators / enforcement agencies. These provided practical, relevant examples of how the components of a food standard could be applied in varying and real circumstances.

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:

Codes of Practice unless adopted under a legislative instrument, are difficult for regulators to require food businesses to comply with, and even more difficult to enforce.

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Neutral

Free text box, no character limit:

The Food Regulation System should cater for, and support, Australian and New Zealand food businesses of different sizes (small, small – medium, as well as large businesses) with a consistent framework in which to operate. For example, not all interests of the food industry are represented by peak bodies such as the Australian Food and Grocery Council or the New Zealand Food Grocery Council.

Often it is larger end of the food industry that is involved, supports, and develops Codes of Practice, and this is not always in the best interest of smaller food businesses. The smaller food businesses, of which there are many within Western Australia, may lack the capacity and resources to be involved, or even apply an industry-agreed Code of Practice.

Should industry develop and operate under Codes of Practice, this would certainly add value to the implementation process of a food standard, however, care must be taken to ensure that the specific requirements applying to a food / food business / process, remains within the Food Standards Code.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

The Department of Health, WA is supportive of a user guide approach to providing information to support the implementation of a food standard. This way the relevant requirements remain within the food standard itself, and the user guide, acts as a tool to further support consistent application and implementation of the standard's specific requirements.

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 parameters outlining the compositional requirements of the FSANZ Board (116) could be reviewed to provide greater expertise in the following areas:

- public health/public health nutrition,
- behavioural science, and
- the law (food law, risk analysis & management, ethics).

Currently, the board (except for the Chair, Consumer NZ member and CEO) has five members with industry experience, with three of the five having a strong dairy industry background. There are three academics of which one also has a strong dairy focus. There are two board members with public health experience, and only one with public health nutrition expertise. There is no dedicated board position representing New Zealand or Australian first peoples. The WA Department of Health supports a review of the compositional requirements of Board members to include greater public health nutrition expertise and/or behavioural science expertise and consideration of a dedicated Indigenous board member position.

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:

The current nomination process ensures a skills-based board and allows experienced persons to be nominated to the Board. When nominating new members, having the Minister consider advice from the Board Chair about the current skill mix of the Board membership will minimise any skills gaps and inform the appointment decisions. Having clearer parameters around the nomination process for board positions 116(c), 116(ca) and 116(f), could support better representation of public health nutrition expertise.

The WA Department of Health does not support the process of an open market for Board representation, given the suitability of the current system and the cost to implement an open market system.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Neutral

Free text box, no character limit:

Potentially it would allow other food companies to 'catch-up' with the application, in terms of having a similar 'ingredient / substance' ready for market. If FSANZ received two similar applications, but one before the other, it is unclear how this would impact on the exclusivity period applying under certain circumstances / conditions.

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:

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:

Fees (levy rate) would need to apply to all applications and be proportionate to size and generated revenue of the food business, to make this equitable to smaller enterprises.

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:

No comment

What would be the expected impact of compulsory fees for all applications?

Positive

Free text box, no character limit:

It would support FSANZ resources to enable the application to be progressed in a reasonable and timely manner. Remove priority afforded to 'paid' applications as per the status quo arrangements in the FSANZ Act, which would make it a more equitable system of considering applications.

However, fees (levy rate) would need to apply to all applications and be proportionate to size and generated revenue of the food business, to make this equitable to smaller enterprises.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Yes

Free text box, no character limit:

Newer technologies, food production processes and areas of innovative food science for which the regulatory framework applicable is not clear, and the safety and suitability for all population groups in the community require risk assessment. As an example, the cell-based / cell-culturing of food.

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?

No

Free text box, no character limit:

WA is not in favour of imposing a food recall coordination levy to support FSANZ to rebalance its workload priorities by addressing resourcing pressures.

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:

WA does not support a levy for this activity.

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?

No

Free text box, no character limit:

The FMM asks FSANZ to raise a Proposal where there is a public health and/or food safety issues arising within the Australia and New Zealand population, where intervention by way of amendment to a food standard would assist in managing the issue and have a net positive benefit to the community at large.

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Negative

Free text box, no character limit:

Resources redirected from other important public health initiatives and food safety surveillance activities undertaken within jurisdictions and having to be redirected to FSANZ standard development.

How would this need to be implemented to be successful?

Free text box, no character limit:

WA does not support this.

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

WA does not support this.

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:

Resources redirected from other important public health initiatives and food safety surveillance activities undertaken within jurisdictions and having to be redirected to FSANZ standard development.

How would this need to be implemented to be successful?

Free text box, no character limit:

WA does not support this.

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

WA is not aware of all the reasons that would trigger a need for FSANZ to rebalance its workload priorities by addressing resourcing pressure. However, knowing that more than half of food businesses are not fully prepared to execute a food recall accurately and in a timely manner, mainly as a result of their poor product traceability, we would assume that FSANZ Food Recall Team would spend considerable time, helping some food businesses to do the work that should be done by the food business, and more importantly that should be done before the business contacted FSANZ Food Recall Team. Considering the consistency of this and other issues that FSANZ Food Recall Team face, WA would propose two recommendations, first as an approach and the second as a long-term solution for your consideration:

1. WA propose to introduce more intensive, but specific training. FSANZ Food Recall Team could discuss with various food industry consultants, who could deliver the training, that would concentrate on specific food recall steps that are taking FSANZ Food Recall Team considerable time and effort to discuss and to complete the work with a food business going through food recall process.

2. WA second proposal can be seen a part of modernising food recall system. It should be considered as a long-term solution, where FSANZ, like FDA, could introduce a concept of 'Tech-Enabled Traceability.' This represents a novel approach to food safety, where technology and related tools create a comprehensive, accurate, and effective traceable food system, an imperative for executing a successful food recall.

New Era of Smarter Food Safety Blueprint | FDA

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:

An opportunity for FMM to engage FSANZ on system priorities to focus the FSANZ workplan on delivering the highest priority project work has some merit. Care needs to be given to ensure FSANZ independence is maintained however a strategic approach would contribute to ensuring the best outcomes for the system are achieved.

The associated policy problem may in part be resolved through the updated Food Regulation Agreement (FRA) which aims to establish regular strategic planning arrangements (ie strategic plan) to support FMM. It is important that visibility of the FRA review is maintained throughout the FSANZ Act review work to ensure consistency in approach.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

This is where the strategic plan developed through FRSC and endorsed by FMM will be key. Actively maintaining risk and emerging issues registers will also be useful in considering prioritisation activities.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

FSANZ more effectively using opportunities at FMM meetings to raise issues/risks or update on key projects/priorities – not just verbal updates but accompanied with associated agenda papers.

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 has increased its engagement with FRSC and the regular updates provided at FRSC meetings have been appreciated and increased system awareness of delays, issues and challenges. The recent approach by FSANZ to engage FRSC closely on the added sugars work is a good example of engagement and collaboration to manage risk and achieve a suitable outcome.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

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?

Yes

Free text box, no character limit:

Having FSANZ as a database custodian would most definitely improve and expedite information sharing across the regulatory system, and support informed decision making. FSANZ could enter reciprocal data sharing agreements that are of mutual benefit with organisations holding or developing nutrient composition databases. For example, in component 2.2.4 (Support bringing more traditional foods to market), FSANZ could reach out to an existing research group establishing the Vitamin D content of bush tucker to share this information, and/or contribute to additional analysis costs and establish a more extensive compositional database of traditional foods. Given the relationship building and sampling framework for this data collection has been established, the resource input from FSANZ is reduced and a project of national significance can be achieved (Bush Tucker and Vitamin D (telethonkids.org.au)). Similarly, the George Institute holds significant nutrient composition data from packaged label analysis (Power in your hands: FoodSwitch and ecoSwitch | The George Institute for Global Health) which could readily support the work of FSANZ.

Review of the FRSC Improved Intelligence Options project outcomes would inform analysis of this policy problem.

The ongoing cost of establishing and maintaining shared databases is important to understand from a jurisdictional perspective especially if costs are shared across the system. To date jurisdictions have very little visibility of the Branded Food Database and how the information contained in this will directly benefit jurisdictions. It is understood that this information will be useful in FSANZ undertaking its standard setting role however any broader application needs to be further explained.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Nutrient composition databases would be the most useful for FSANZ to be the data custodian, or to have data sharing agreements with other organisations or academic institutions.

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:

See answer to below question.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

International information sharing is an area that should be explored as a strategy to reduce proposal/application workload and expedite approval. Sharing arrangements could be considered on a case-by-case basis and may follow a flow chart approach to assessment (see Figure 1.). The sharing arrangements could be informal and/or formal where a specific joint bi- or multi-national project exist.

For example, the recent work done in defining added sugar for P1062. The final revised standard will not permit a 'no added sugar(s)' claim when a food:

- contains, or is, an 'added sugar' as defined in the Code
- does not contain 'added sugar' but contains more sugars (i.e., monosaccharides and disaccharides) than:
 - o 10.0 g /100 g for solid food
 - o 7.5 g /100 mL for liquid food

Similar in approach, in their Nutrient and Promotion Profile Model, the World Health Organization (1) (2022) outlines a front-of-pack indicator, label or flag is required when the total energy from sugar exceeds specified thresholds:

- i. 30% total energy (7.5g /100kcal) for dry cereals and starches (category 1), fruit and vegetable purées/ smoothies and fruit desserts (category 3) and dry fruit snacks (category 5.1); and
- ii. 40% total energy (10g/100kcal) dairy foods (category 2)

Although not strictly identical, the synergies in this work could have easily informed an early approach to defining added sugars in the Australia context.

Figure 1. Draft example - flow process for international sharing arrangements.

Application/ Proposal Received >> Existing international standard >> (Yes) >> Application to Australian context? >> Alignment with Australian Requirements.

Existing international standard >> (No) >> Application/ Proposal FSANZ enters workplan.

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:

There may be value in enabling FSANZ to interpret food standards, from the perspective of what was the intention of the standard in its drafting. This would enable food businesses and enforcement agencies to apply a standard in context of how it was intended to be applied. It is important to recognise however, that until a standard is tested legally in Court, the interpretation can be subjective. Guidance and the intention (the how) of what is written in a standard could be complied with, or what a clause within a standard was intended to mean, would be of beneficial for both food businesses and enforcement agencies.

The other issue is, most food product would be required to comply with multiple food standards, so the statement of intent of each standard would need to be able to be considered within the context of how the standards apply to the food as a whole.

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 greatest benefit is likely to be the application of labelling and potentially compositional requirements of the Code. It is not clear however, of whether consistency would be an outcome of issuing a Statement of Intent, for Chapter 3 and 4 standards, as these are outcome-based standards, and jurisdictions have more flexibility in how the requirements of these standards are complied with, often depending on the capacity of the food business, its location (any local laws) and design, its combination of food handling activities, and any other the additional requirements outside of the Code, as per State or Territory Food Acts, i.e., primary production and processing food businesses.

While providing a Statement of Intent is likely to be helpful for enforcement agencies and assist consistency in the application of the standard, it is not a guarantee of improved overall consistency, as there are other factors outside of the Code, that may also contribute to this. Basically, each food business is different, applying an interpretation of an outcome-based standard, without considering all aspects of the food business and its operation may be challenging.

There is a direct conflict between providing a regulatory environment that supports outcome-based action to demonstrate compliance, while requiring consistency in approach, both across and within a jurisdiction.

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:

WA would welcome a FSANZ capacity to update and maintain guidelines for industry to improve consistent interpretation and enforcement of food standards. It is medium and small size food businesses in WA are most of the time struggling with a concept of outcome-based legislation. Therefore, in order to get consistency in interpretation, and enforcement of standards, FSANZ industry guidelines should clarify using relevant examples, subjects that are not always easily understood. Few topics that we have noticed that WA food businesses are finding challenging are listed below, but not limited to:

- o Alternative way of compliance
- o Non-traditional foods
- o Kava
- o Health claims

Finally, it has been reported to us that WA food businesses and WA food enforcement agencies found FSANZ 'Safe Food Australia -A guide to the Food Safety Standards' to be helpful document. Therefore, we would support FSANZ development of industry guidelines to guide interpretation of food standards.

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:

Amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Maori people would support cultural considerations being taken into account in the food standards process.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

States and Territories have food legislation compliance and enforcement policies in place based on national principles. FSANZ already collaborates with the jurisdictions at a State / Territory level enforcement agency and does this well. In WA the Department of Health, (DOH) is one of 138 enforcement agencies, under the WA Food Act 2008 (Food Act). The appropriate enforcement agency for most food businesses (outside of food businesses prescribed

by regulation to remain with the DOH), is the relevant local government authority responsible for the district in which the business is located or housed / based.

The DOH in its role as administrator of the Food Act operates in the space between FSANZ and local government in facilitating consistent implementation within the State of the Food Standards Code. For FSANZ to collaborate with all 138 enforcement agencies within WA, would be challenging.

It is also important to recognise the Food Acts are outcome based in nature, meaning that food businesses have multiple ways in which to demonstrate compliance with this legislation or in other words show that they are adequately identifying and managing the food safety risks within the business, particularly with Chapter 3 and 4 of the Food Standards Code.

The Food Act provides a range of compliance and enforcement tools that vary in severity. A graduated and proportionate response is taken in the application of these tools based on risk to public health and safety, and considers the severity of the alleged offence, compliance history of the food business, circumstances in which the alleged offence occurred, cooperation of the food business with the regulator, remedial action taken by the food business, due diligence taken by the food business, and if it is in the public interest. All these factors impact on how a decision is made about the appropriateness of an intervention by an enforcement agency.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 18:30:10

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:



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL



SUBMISSION

**Response to: Public consultation – Modernising
the FSANZ Act 1991: Impact Analysis**

10 April 2024

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

With an annual turnover in the 2021-22 financial year of \$144 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

The diverse and sustainable industry is made up of over 17,000 businesses ranging from some of the largest globally significant multinational companies to small and medium enterprises. Each of these businesses contributed to an industry-wide \$3.2 billion capital investment in 2021-22.

Food, beverage and grocery manufacturing together form Australia's largest manufacturing sector, representing over 32 per cent of total manufacturing turnover in Australia. The industry makes a large contribution to rural and regional Australian economies, with almost 40 per cent of its 271,000 employees being in rural and regional Australia.

It is essential to the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry are recognised and factored into the Government's economic, industrial and trade policies.

Throughout the COVID-19 pandemic, the food and grocery manufacturing sector proved its essential contribution to Australian life. Over this time, while our supply chains were tested, they remained resilient but fragile.

The industry has a clear view, outlined in *Sustaining Australia: Food and Grocery Manufacturing 2030*, of its role in the post-COVID-19 recovery through an expansion of domestic manufacturing, jobs growth, higher exports and enhancing the sovereign capability of the entire sector.

This submission has been prepared by the AFGC and reflects the collective views of the membership.

EXECUTIVE SUMMARY

The AFGC welcomes the opportunity to respond to the *Public Consultation – Modernising the Food Standards Australia New Zealand Act 1991: Impact Analysis* (the “IA”).

Australian and New Zealand consumers enjoy one of the safest, most diverse, most abundant, most secure and affordable food supply in the world. It is delivered by an innovative, internationally competitive, domestic food manufacturing sector in each country, working in partnership and guided by a world’s best practice food regulatory system. Global supply chain issues, rapid food technology and scientific advances, and greater understanding of the food, nutrition, and health nexus are driving the need for reforms of the food regulatory system.

The IA suggests ways in which the FSANZ Act could be amended to clarify its objectives, extend its coverage, streamline and modernise FSANZ processes, and meet its resourcing needs. The AFGC does not agree with all of the suggestions for change put forward by the IA, but it is aligned with many, and supportive of the overall need for reform. As the review of the FSANZ Act and other aspects of the food regulatory system proceed, it is critical that enhancing the strength and resilience of the food industry is a key outcome, whilst protecting public health and safety retains its primacy. These dual objectives can only be achieved if FSANZ’s central role in the food regulatory system is embraced by the review and subsequent reforms which:

1. **confirm the independence of FSANZ as a Statutory Authority** through maintaining adherence to best practice regulation informed by scientific evidence and fact, and guided, but not dictated to, by an appropriate food regulatory policy framework determined by the Food Ministers’ Meeting (FFM),
2. **recognise that the current public health and safety protection objectives of FSANZ are extensive**, and well able to respond to both short- and long-term health and safety issues,
3. **acknowledge the fundamental public good function of food regulation** and FSANZ’s role through providing public funding that at least matches that of comparable overseas regulatory agencies such as Health Canada, and so ensures FSANZ’s regulatory, scientific and technical expertise is world-class in capability and capacity,
4. **modernise and streamline food regulatory processes** through providing flexible and risk-based pathways to proportionate regulatory responses and approvals encompassing the full range of regulatory measures including black letter law, codes of practice and guides, and notification and self-substantiation mechanisms,
5. **facilitate food industry innovation through fee for services offerings** for applications which are expedited and/or provide an exclusive capturable commercial benefit to the applicant
6. **harmonise regulatory approaches with international agencies** through information sharing, aligning risk-based frameworks, and where appropriate and low risk, recognition by FSANZ of overseas regulatory approvals and their supporting evidence base,
7. **update FSANZ governance processes** providing a more skills based, as opposed to sector representing board, and establishing appropriate board delegation of authorities to the FSANZ executive to streamline decision making, and
8. **direct greater coordination and cooperation between the FFM, the Food Regulation Standing Committee and FSANZ** and without compromising the distinct roles and responsibilities each has in operating a modern [bi-]national food control system.

The AFGC considers the options canvassed in the Impact Analysis (IA) go only part of the way to meeting these criteria through the reform proposals which are described. There is, however, a lack of detail on how they would work in practice.

For example, the IA canvasses the need for clarity in the definitions of public health and safety to clarify the FSANZ can address short- and long-term health needs despite acknowledging that this is already possible. The AFGC agrees with the IA that further clarification would not materially affect FSANZ's operations [but does not oppose an amendment to the FSANZ Act if deemed necessary].

Overall, the preferred Option 2 does not extend the scope of FSANZ's regulatory functions but rather proposes operational changes to streamline the processing of applications through greater adherence to a new risk-based framework, more use of codes of practice, and strengthening of international linkages. The IA has discarded self-substantiation and notification as an option for low-risk applications approvals, which the AFGC opposes. This denies consumers the benefits of new food technologies and nutritional science in a timely manner. Moreover, it is inconsistent and contrary to current industry practices when complying with food safety standards and represents a missed opportunity for regulatory streamlining and sparing of resources for FSANZ and the jurisdictions.

The AFGC is strongly opposed to the introduction of an industry levy to meet the substantial \$10 million annual shortfalls in FSANZ funding identified by the IA. However, the IA dismisses the well-established principle that public good functions by the government should be funded from the government's general revenue by proposing an industry levy. This fails the tests of good taxation policy; namely:

- **equity** - by proposing arbitrary cut-offs for the businesses to pay the levy, and the amount,
- **efficiency** – there are large administrative costs for industry and government to collect the levy, and
- **practicality** - identifying the companies in the supply chain which might be levied.

The simplest, most equitable and most efficient way to meet the shortfall would be to double FSANZ's funding to a *per capita* to match that of comparable overseas regulatory agencies such as Health Canada.

The AFGC welcomes further input in the review of the FSANZ Act and other parts of the ongoing review of the ANZ food regulatory system.

RECOMMENDATIONS

The AFGC recommends that:

1. the Impact Analysis (IA) conclusions reflect that a safe, nutritious, abundant and affordable food supply is critically dependent on prosperous Australian and New Zealand food manufacturing industries and a modernised ANZ food regulatory system.
2. any reforms to the FSANZ Act do not diminish the independence of FSANZ as a statutory authority by giving greater weight to the requirement for FSANZ to 'have regard to' Food Ministers' Meeting (FMM) policy guidelines during the development of food standards.
3. Option 1 of IA be rejected, and selected elements of Option 2 be taken forward for further development.
4. no amendments clarifying the meaning of 'public health and safety' in the FSANZ Act are required.
5. further work be undertaken to develop an appropriate, comprehensive risk framework for applications and proposals to improve the efficiency of assessment, accelerate pathways to approval, and establish appropriate and proportionate regulatory approaches.
6. the funding of FSANZ comprises:
 - Increased federal government funding to levels similar to that of comparable overseas national food regulatory agencies, and
 - cost recovery mechanisms currently available to applicants seeking amendment of the Food Standards Code be maintained.
7. elements in Option 2, which are clearly identified as improving the efficiency and effectiveness of FSANZ operations, be prioritised as key reforms for the FSANZ Act, and FSANZ's operations.
8. self-substantiation for low-risk foods remains within the scope of the FSANZ Act review as it is the single most potent enhancement of the efficiency of FSANZ operations with very low risk to consumers.
9. the FSANZ Act be amended to allow the FSANZ Board being able to delegate decision-making for low-risk matters and approvals to the FSANZ CEO as long as the Act prescribes:
 - conditions under which matters and approvals are considered low-risk, and
 - reporting requirements of the decisions made by the FSANZ Board and CEO to maintain the transparency of FSANZ decision-making.
10. the FSANZ Act not be amended to allow the FMM to delegate decision-making to senior bureaucrats in the jurisdictions.
11. FSANZ Board appointment processes be reformed to align with contemporary good governance principles resulting in an open market recruitment of a skills- and expertise-based Board.
12. any recommendations pertaining to amendment of the FSANZ Act, or FSANZ's operational processes not be based on the misconception that there is strong evidence of risk to public health and safety from the accumulative or long-term health impacts of FSANZ-approved food additives in the Australian and New Zealand food supply.
13. the IA reflects that food safety has been a paramount concern of food companies and has been effectively assured through robust preventative food safety practices for many decades and well before the advent of the current food regulatory system.

14. the 4 best practice elements of regulatory systems identified by the IA do not diminish the important principles of best practice regulation as detailed in the Federal Government's Regulatory Impact Analysis Guide for Minister's Meetings and National Standard Setting Bodies.
15. further consultation be conducted to determine how best to incorporate recognition of indigenous culture into the FSANZ Act, and the practical implications on FSANZ's operations including the impact on FSANZ's resource requirements.
16. the IA concludes that FSANZ provides comprehensive reasoning supporting its decisions, including how it gives regard to policy guidelines, as demonstrated by its strong track record in having its recommendations accepted without review by the FMM.
17. amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the FMM.

INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to respond to the *Public Consultation – Modernising the Food Standards Australia New Zealand Act 1991: Impact Analysis* (the “IA”).

This submission represents the collective view of the AFGC membership. Reflecting the importance of the issue, AFGC member companies will be making their submissions to the current consultation. Their views may differ in some detail from the AFGC’s views, but the AFGC is confident that all will reflect a common view that the food regulatory system requires a substantial overhaul to modernise it and to align it more closely to both the needs of the food industry and the needs of the wider community it serves.

This submission is in 3 main parts:

1. General comments about the IA and the approach it takes in describing the current bi-national food regulatory system (its shortcomings and successes), and the opportunities for improvement
2. Specific comments regarding some points made in the draft RIS which have raised some concerns, and
3. Responses to questions posed in the IA, as submitted in the portal.

GENERAL COMMENTS

Food industry partners with the food regulatory system

The AFGC continues to view the modernisation of the food regulatory systems as a high priority.

The AFGC holds the strong view that an effective food regulatory system and a prosperous food industry work together, hand in hand, in ensuring a food supply of the highest quality for consumers in Australia, in New Zealand and in the export markets of both countries. As the review of the FSANZ Act and other aspects of the food regulatory system reach their conclusion, it is imperative that this bond is preserved, and ideally enhanced.

In previous submissions, the AFGC has emphasised the critical importance the food industry plays in creating wealth for Australia and its important role in food security, an issue that other stakeholders have also raised in the consultations around modernising the food regulatory system¹. Australia’s food security relies heavily on a strong, internationally competitive, profitable agri-food system to provide the bulk of food ingredients consumed by Australians as manufactured food products, manufactured in Australia.

The AFGC strongly supports reforms that are consistent with the imperative that Australia’s food system’s function be strongly aligned with supporting public safety and health objectives. This is best achieved through supporting a strong, resilient, domestic, internationally competitive food industry investing in

¹ Impact Analysis, para 5, p82.

innovative products carrying truthful scientifically-substantiated health claims about their contribution to better diets protecting and promoting good health.

This requires a food regulatory system responsive to the dual needs of providing high levels of consumer protection and a profitable, competitive, domestic food industry. Only profitable companies can innovate, and the Government can only work closely with domestic manufacturing companies encouraging them to innovate to support domestic health priorities.

The food manufacturing sector competes at home, and overseas, in a global market. This requires best practice regulation (to minimise compliance costs) which is as flexible as possible to support novel food technologies, and the label claims, allowing the industry to inform consumers truthfully of their benefits.

Through reforms of the food regulatory system based on these principles, greater resilience in Australia's food system will be created leading, ultimately, to greater food security for Australians. Reform of the FSANZ Act is the lynchpin to a successful overall reform package encompassing all the elements of the ANZ food regulatory system benefiting Australians and New Zealanders alike.

Recommendation 1.

The AFGC recommends that the IA conclusions reflect that a safe, nutritious, abundant and affordable food supply is critically dependent on prosperous Australian and New Zealand food manufacturing industries and a modernised ANZ food regulatory system.

The independent role of FSANZ

The clear division between policy development (FMM responsibility) and the setting of standards (FSANZ responsibility) is a safeguard mechanism. This ensures food standards and regulations development by FSANZ, as a statutory authority, is independent, free from political interference, and based on the best available scientific evidence and fact-base reflecting the technical complexities of a food system tasked with delivering very safe, very nutritious foods to consumers.

The AFGC considers it critical that FSANZ maintains its independence. The arguments favouring regulatory frameworks in some areas being kept at arm's length and independent are well established. The *Royal Commission on Australian Government Administration* found that the two main reasons for the creation of a statutory body were the need for independence and the status conferred by establishment legislation². Statutory Authorities are free from party political pressures and can focus on long-term priorities, but still be accountable under the *Public Governance, Performance and Accountability Act 2013* (Cth), which contains requirements relating to governance, planning, record keeping, and reporting³.

² [Royal Commission on Australian Government Administration: report \(apo.org.au\)](https://apo.org.au)

³ B.B. Saunders et al. Responsible Government, Statutory Authorities and the *Australian Constitution*. Federal Law Review Vol 48. Issue 1. 2019. <https://doi.org/10.1177/0067205X19890445>

There are implications of the division between ‘policy’ and ‘regulation’ on the food system. Society’s expectations drive political responses that prioritise the outcomes in broad terms being sought such as the protection of public health and safety and provision of information to consumers. The political process, and therefore policy development is, by definition, contestable and so subject to influence from different vested interest groups. Food regulation, or food standards, specifies enforceable behaviours of the food industry consistent with the policy guidance but based on independently assessed scientific evidence and facts, rather than expectations and opinions of vested interests. This division between policy and regulation is assured by food standards being developed by a statutory authority – i.e. FSANZ.

To be clear, the AFGC is not arguing that the FMM should have no influence on FSANZ deliberations through its collection of policy guidelines, but that influence should in no way distort or override FSANZ’s careful assessment of the relevant scientific evidence and fact-base when assessing applications and proposals to amend the FSC.

Recommendation 2.

The AFGC recommends that any reforms to the FSANZ Act not diminish the independence of FSANZ as a statutory authority by giving greater weight to the requirement for FSANZ to ‘have regard to’ Ministerial policy guidelines during the development of food standards.

Reform of the food regulatory system is required

The IA reflects that Australian and New Zealand consumers enjoy a safe and nutritious food supply which confirms that the FSANZ Act and FSANZ operations are working well in achieving their stated objectives and purpose. The AFGC has similar views. The IA also describes a cumbersome food regulatory system suffering from complex mandatory processes, chronic under-resourcing, poor coordination across key agencies, and eroding stakeholder confidence. The AFGC has similar views.

The IA suggests ways in which the FSANZ Act could be amended to clarify its objectives, extend its coverage, streamline and modernise FSANZ processes, and meet its resourcing needs. The AFGC does not agree with all of the suggestions for change put forward by the IA, but it is aligned with many, and supportive of the overall need for reform.

The AFGC therefore provides its strong support for parts of Option 2, rather than Option 1 – *status quo*.

Recommendation 3.

The AFGC recommends Option 1 of the Impact Analysis be rejected, and selected elements of Option 2 be taken forward for further development.

SPECIFIC COMMENTS

The AFGC makes the following comments on specific issues or concerns which have been identified in the IA.

Clarification of public health

Concerns regarding the rising incidence of obesity and associated non-communicable diseases (NCDs) have driven a focus on using the FSC as a policy response. The IA canvasses the option of clarifying the definition of public health protection within the FSANZ Act mainly, it would seem, to address the concerns among some stakeholders that ambiguity exists as to whether the Act encompasses both short-term and long-term health effects. The IA makes it clear that⁴:

“In practice, food regulatory measures established by the Act are already being used to protect both short- and long-term health”.

The AFGC concurs with this view. Regulatory options targeting healthy eating available to FSANZ through the FSC comprise:

- Food labelling – through mandatory requirements and restrictions
- Food composition – mandatory additions and restrictions, and
- Food accessibility – restrictions on places of sale.

Healthy diets are a function of the composition of foods consumed and the amount of food consumed in a particular time period, at both the individual and population levels. The amount consumers eat is, of course, ultimately a personal choice, and challenging to regulate. Regulation can assist, however, by ensuring that foods are appropriately labelled so that consumers can make informed choices. It remains a fundamental maxim, however, that all foods can contribute to a healthy diet, and the converse, is that all foods can contribute to poor diets. It is important to note that public health extends beyond simply diet and includes, for example, physical activity.

The AFGC contends that the current wording of the Act in conjunction with consideration of Ministerial policy guidelines, which explicitly defines public health and safety as covering both short and long-term effects associated with food consumption, is sufficient.

Recommendation 4.

The AFGC recommends that no amendments clarifying the meaning of ‘public health and safety’ in the FSANZ Act are required.

A risk-based framework and new paths to approval

The AFGC strongly supports reform of the FSANZ Act which allows FSANZ to employ a risk-based framework to determine appropriate pathways to approval of applications and a proportionate regulatory response.

⁴ Impact Analysis, para 3, p39.

The benefits of such a framework would include:

1. **stakeholder alignment** on the necessity, or not, for regulatory interventions and the nature and degree of attention for proposed interventions and amendments (applications or proposals) to the FSC.
2. **more efficient allocation** of FSANZ staff resources
3. **enhanced enforcement priorities** and resource requirement decisions by the jurisdictions
4. **greater confidence for public health** and consumer groups that regulatory resources are being devoted to priority areas
5. **greater certainty for the industry** in the outcome when seeking to bring innovative food technologies, novel foods and claims to market, and
6. **a surer path to proportionate regulatory responses** from the food regulatory system.

The AFGC supports the proposed *Indicative risk framework*⁵, but considers the following additional factors should be considered explicitly in the framework *vis*:

- is the subject substantially the same as an issue previously considered by FSANZ? If so, a fast-track pathway should be considered. For example, FSANZ has approved close to 100 foods derived from gene technology most of which are very similar in the way they are developed. A fast-track approval process should apply in these cases.
- has the subject already been assessed as having negligible or low risk by an overseas relevant, competent authority (such as Health Canada, the US Food and Drug Administration, or the European Food Safety Authority)?
- has regulatory approval been provided by an overseas, relevant authority, and has the approval included risk-management provisions,
- are there risks to Australia's reputation which might impact trade or implications to Australia's position as a signatory to the World Trade Organization agreements? and
- has an established presence in overseas markets been confirmed with no public health or safety concerns being identified?

Similarly, a FSANZ risk-based framework could extend to conducting a risk assessment of the applicant when the application is initially considered of low to moderate risk. For example, if the applicant had established a track record of submitting applications of similar complexity which:

- met all the requirements of the FSANZ Application Handbook,
- had been assessed and recommended with no requests from FSANZ for further information,
- had no objections or concerns raised from stakeholders (particularly jurisdictions), and
- FFM approvals had been readily provided without concerns

the applicant, as well as the application, might qualify as being 'low risk' with the application directed down a 'lower risk' pathway to approval.

The AFGC supports greater use of lower-risk amendments utilising codes of practice. Codes of practice, either as prescribed codes where compliance for specified entities is mandatory, co-regulatory codes which are supported by the government, but compliance is voluntary, or self-regulatory codes completely independent of government and compliance is voluntary are all

⁵ Impact Analysis, Table 10, p 51

legitimate regulatory measures. The AFGC considers there is a place for all three types of codes, particularly if development is led by industry.

A risk-based framework for labelling standards was developed as an outcome of the Blewett review of food labelling law and policy in 2011⁶. For high-risk issues (e.g. food safety) it recommends mandatory food standards, but for low-risk 'values' issues such as consumer perceptions and ethical issues, codes of practice and self-regulation are more suitable.

A working example is the *Grains & Legumes Nutrition Council's (GLNC) Code of Practice for Whole Grain Ingredient Content Claim*⁷. In 2013, the GLNC, which is an industry association representing cereal food manufacturers, established this voluntary Code which is intended to guide the use of whole grain ingredient claims, on food labels in Australia and New Zealand. The Code provides clear, consistent messaging on the whole grain content of foods helping consumers make informed choices. It was developed in consultation with regulators and the wider community in response to an absence in the FSC of a standard to regulate the use of whole grain content claims on food labels. It is a model of how an industry code can work successfully as an alternative to black-letter law benefiting both the industry and consumers.

Recommendation 5.

The AFGC recommends that further work be undertaken to develop an appropriate, comprehensive risk framework for applications and proposals to improve the efficiency of assessment, to accelerate pathways to approval, and establish appropriate and proportionate regulatory approaches.

FSANZ funding

The AFGC is sympathetic to the very tight resource constraints under which FSANZ operates having witnessed its federal budget allocation diminish in real terms over the last decade. Consequently, the AFGC strongly supports greater resources being made available to FSANZ consistent with its leadership role as Australia's national food standards agency.

As the IA has recognised and described, there is an extensive public good / community benefit resulting from the development and setting of food standards - namely the protection of public health and safety, and the provision of information for informed consumer choice.

The AFGC recognises there is an industry good associated with food regulations which act as guidelines for industry behaviours based on the community expectations of the day, and the basis of penalties if companies cross those guidelines.

It is also recognised that regulation imposes costs on both industry (compliance costs) and government (enforcement costs), so it is in the best interests of the community as a whole that regulation costs are minimised.

⁶ Labelling Logic: Review of Food Labelling Law and Policy (2011). Commonwealth of Australia.

⁷ [Code of Practice for Whole Grain Ingredient Content Claims - Grains & Legumes Nutrition Council \(glnc.org.au\)](http://glnc.org.au)

The clear and substantial public good articulated in the IA confirms there is a strong and legitimate case for Government funding of the food regulation system, and specifically FSANZ's functions. FSANZ can charge a fee for assessing applications outside the FSANZ work plan schedule where:

- the applicant wishes to expedite the commencement of the assessment, and/or
- an *exclusive capturable commercial benefit*⁸ is conferred.

The AFGC strongly supports the current system which combines public funding of predominantly public good functions of FSANZ, with options for industry to pay for applications under the conditions listed above. The fee for application option aligns strongly with the current *Australian Government Cost Recovery Policy*⁹ which supports cost recovery based on the recipients of a government activity receiving a specific service, rather than a general public benefit being generated.

The AFGC **strongly opposes** the IA suggestion of imposing an industry levy on the largest 5,000 food companies to meet the current estimated shortfall in FSANZ funding of \$10m p.a. based on:

1. **equity** – imposing a levy on a portion of the food industry based on arbitrary criteria (size of levy, turnover ranking of company) is fundamentally inequitable
2. **efficiency** – the \$10m FSANZ shortfall is relatively small compared to the overall Federal budget. Likely, the bureaucratic cost of collecting the levy, and the cost to industry of paying it (setting up payment facilities etc) would surpass the amount collected, and
3. **practicality** – identification of the 5,000 businesses to be levied would be difficult as no database identifies food industry businesses and ranks them by turnover. To be clear the food businesses which are regulated by the FSC extend from primary producers to distributors, ingredient manufacturers, manufacturers and retailers (restaurants, hotels, pubs, clubs, fast food outlets, convenience stores and supermarkets). Identifying which businesses would be captured would be problematic in the extreme.

Furthermore, there is no mechanism to collect the levy. According to the *Australian Government Cost Recovery Policy*⁹ levies raised by statutory authorities such as FSANZ require separate legislation which itself would have to align with the Government's broader taxation policy.

A recent report¹⁰ by the Productivity Commission states that since the 1960s the number of industry levies has risen from 4 to 248 and warns:

“Their design tends to deviate from the general principles of good tax system design being narrowly applied to distortive and less efficient tax bases – transactions, revenue and inputs to production”.

The report proposes several policy and decision frameworks against which proposed levies can be tested, noting the current lack of any such framework, and warning of the need to avoid deviations from good tax system design as a foundation for Australia's productivity growth.

⁸ <https://www.foodstandards.gov.au/business/novel/exclusivity-of-use-for-novel-foods-and-nutritive-substances>

⁹ [Australian Government Cost Recovery Policy | Department of Finance](#)

¹⁰ [Towards Levyathan? Industry levies in Australia - Productivity Commission \(pc.gov.au\). 2023](#)

The basic principles for cost-recovery by the Government are well-established¹¹ *vis*:

“Cost recovery arrangements that are not justified on grounds of economic efficiency should not be undertaken solely to raise revenue for Government activities, and

Cost recovery arrangements should apply to specific activities or products, and not to the agency as a whole”.

The AFGC strongly advises that the solution to FSANZ’s funding shortfall lies in the IA itself¹².

The international comparisons of the central government support of food regulatory systems bring into stark relief that FSANZ is the poor cousin to sister agencies *vis*:

“Comparable international bodies invest significant resources to support the work of their standard-setting bodies. There is some variation in the investment made, with the per capita investment in the Canadian food standard-setting body being \$1.31 per person, per year, increasing to \$3.60 per person in England; \$7.00 per person per year in Ireland; and \$7.76 per person, per year in Scotland. By contrast, FSANZ’s substantive funding equates to \$0.70 per person per year in Australia and \$0.40 per person, per year in New Zealand”.

Health Canada is commonly viewed as the international agency most similar to FSANZ, and indeed, Canada itself is probably the country most similar to Australia. And yet, Australia’s central food regulatory agency, i.e. FSANZ, receives just 50% *per capita* funding compared to its Canadian counterpart. The AFGC also understands that Health Canada does not collect fees from industry to support its public good food regulation functions.

The \$10m shortfall in FSANZ funding is comparatively small when compared to the Australian Government’s overall budget. The simplest, most equitable and most efficient remedy for addressing the shortfall would be for the Federal Government to increase FSANZ’s funding to a *per capita* level similar to that of overseas regulatory agencies.

Recommendation 6.

The AFGC recommends the funding of FSANZ comprises:

- increased federal government funding to levels similar to that of comparable overseas national food regulatory agencies, and
- cost recovery mechanisms currently available to applicants seeking amendment of the Food Standards Code be maintained.

¹¹ <https://ministers.treasury.gov.au/ministers/peter-costello-1996/media-releases/release-productivity-commission-report-cost-recovery>

¹² Impact Analysis, para 3, p24.

Net Benefit (Chapter 6) and Best Option (Chapter 8) methodology

The AFGC supports strongly attempts to determine the benefits and costs of regulatory interventions in monetary terms. The reality is, however, that the detriments and benefits of regulation for both industry and the wider community are difficult to identify in their entirety, and it is difficult to assign a monetary value to them.

The AFGC considers, therefore, that at best the quantitative dollar benefit/cost ratios described in the IA are indicative and support possible options for change identified in the qualitative assessments.

Notwithstanding the shortcomings of the net benefit and best option assessments, the AFGC concurs with the overall conclusions of the IA that there are improvements to be made in the development of the FSC and FSANZ's operations. In the absence of robust quantitative assessments of benefit changes, elements of Option 2 which due to their obvious intrinsic value will result in the streamlining of FSANZ operations should be implemented.

Recommendation 7

The AFGC recommends that elements in Option 2, which are clearly identified as improving the efficiency and effectiveness of FSANZ operations, be prioritised as key reforms for the FSANZ Act, and FSANZ's operations.

Self-Substantiation and low-risk applications

The IA states that suggestions previously canvassed that self-substantiation pathways for industry to bring low-risk foods to market were opposed by health stakeholders, and as a consequence, they have been excluded from further analysis by the FMM.

This is a disappointing outcome for two reasons:

1. it is a clear opportunity to streamline regulatory approvals sparing FSANZ resources and allowing the food industry to get better products to market sooner, which would benefit consumers with, by definition, little or no risk to public health, and
2. it perpetuates a fundamental inconsistency in the food regulatory system which relies heavily on industry self-substantiation to assure the production of safe food through outcome-based standards and implementation of company-specific food safety plans (including safe allergen management).

Indeed, the US FDA has stated:

“Under HACCP-based regulatory programs, there is a clear delineation of responsibilities between industry and regulatory agencies: Industry has the primary responsibility for the safety of the food it produces and distributes; the government’s principal role is to verify that

industry is carrying out its responsibility, and to initiate appropriate regulatory action if necessary¹³.

Consequently, the AFGC maintains its strongly held view that self-substantiation should remain under consideration during the development of reforms of the food regulatory system.

Recommendation 8

The AFGC recommends that self-substantiation for low-risk foods remains within the scope of the FSANZ Act review as it is the single most potent enhancement of the efficiency of FSANZ operations with very low risk to consumers.

Delegations of decision-making

The IA has proposed delegations of decision-making *vis*:

1. from the FFM to the senior bureaucrats; and
2. from the FSANZ Board to the FSANZ CEO.

FSANZ processes, including mandatory consultations, are prescribed in the FSANZ Act. Furthermore, FSANZ processes and their outcomes are subject to full disclosure through the decision-making steps for both applications and proposals to amend the FSC. FSANZ publishes extensive documentation describing the basis of its decisions right up to the drafts of proposed FSC amendments. The AFGC supports the FSANZ Board being able to delegate decision-making to the FSANZ CEO for approvals of low-risk amendments to the FSC.

Recommendation 9

The AFGC recommends that the FSANZ Act be amended to allow the FSANZ Board being able to delegate decision-making for low-risk matters and approvals to the FSANZ CEO as long as the Act prescribes:

- conditions under which matters and approvals are considered low risk, and
- reporting requirements of the decisions made by the FSANZ Board and CEO to maintain the transparency of FSANZ decision-making.

The Food Regulation Sub-Committee (FRSC) and FMM processes leading to amendments to the FSC are not as transparent. Advice from individual jurisdictions' bureaucracies to their Ministers on the FMM is not published and the outcomes of FMM deliberations are provided only as high-level communiqués following each FMM meeting.

¹³ US Food and Drug Administration, 1997. Food Safety from farm to table. A National food safety initiative report to the President. Dairy, Food and Environmental Sanitation, 17 (9): 555-574.

FRSC engages sporadically with stakeholders where the priorities of the food regulatory system are described, but there is limited information shared about decisions on FSC amendments.

It is also unclear whether the FMM decision-making delegations proposed would be intended to go to FRSC members (which would seem logical) or to other senior bureaucrats in government departments. In either case, the AFGC opposes the proposal as it would perpetuate the opaqueness of food regulation decision-making of the jurisdictions.

Recommendation 10.

The AFGC recommends that the FSANZ not be amended to allow the FMM to delegate decision-making to senior bureaucrats in the jurisdictions.

FSANZ Board selection

The AFGC notes that the IA cites a previous review of FSANZ's Board appointment processes which provided recommendations to:

“.....better align FSANZ with contemporary approaches to governance and merit-based selection of Board members”.

The AFGC agrees that the FSANZ Board composition should align with contemporary good governance practices. When members of a Board are nominated by representative organisations their appointment may come with an implicit understanding that they pursue specific food regulation outcomes. This is inconsistent with the concept of an independent Statutory Authority. Board members' primary duty is to support and guide FSANZ to achieve the objectives, purposes, and functions specified in the FSANZ Act.

Allowing FSANZ Board members to be selected from the open market would result in a skills-based, independent Board more able to make decisions quickly. This, in turn, would contribute to streamlining FSANZ processes, and align with the overall objective of making the food regulatory system more agile and responsive.

The AFGC notes that consistent with good governance principles the FSANZ Board should conduct its own succession planning and appointment processes with new appointments selected based on how their skills complement those of other Board members to ensure the full suite of Board skills and expertise is maintained. The AFGC also notes that Board appointments would remain at the discretion of the Minister of Health and Ageing.

Recommendation 11.

The AFGC recommends that FSANZ Board appointment processes be reformed to align with contemporary good governance principles resulting in an open market recruitment of a skills- and expertise-based Board.

Further comments and observations

a. Second last paragraph, p12

The IA correctly notes changes that have occurred in consumer behaviour and food options since the 1990s and makes the statement:

“This means that individuals can be exposed to higher volumes of food additives and other ingredients compared to in the past, which can have a compounding effect on safety and long-term health outcomes”.

A similar statement is made later in IA (last para p32 - p33) where it is stated:

“...various studies have linked increased exposure to food additives over time with health issues such as asthma, attention deficit hyperactivity disorder, heart difficulties, cancer and obesity.”

The AFGC is not aware of a substantial body of evidence supporting either statement and considers both to be incorrect. Furthermore, the statements cast serious doubt on the effectiveness of FSANZ’s past and current food additive safety assessment capabilities.

Only the second statement carries a citation, and the AFGC assumes both are [mis-]informed by it, as the citation has been retracted by the journal in which it was published.

The retraction notice¹⁴ states:

“...indicators of systemic manipulation of the publication process.....undermines our confidence in the integrity of the article’s content...”

It would be appropriate for the IA to be amended to ensure this error of facts, or any conclusions drawn from them, do not erroneously influence the final recommendations of the current consultation.

Recommendation 12

The AFGC recommends that any recommendations pertaining to the amendment of the FSANZ Act, or FSANZ’s operational processes not be based on the misconception that there is strong evidence of risk to public health and safety from the accumulative or long-term health impacts of FSANZ-approved food additives in the Australian and New Zealand food supply.

Last paragraph, p20

The IA stated that the Terms of Reference for the review called for a focus on:

“...being consistent with best practice regulation and standard-setting”.

¹⁴ [Retracted: Toxicological and Teratogenic Effect of Various Food Additives: An Updated Review \(hindawi.com\)](https://hindawi.com)

The AFGC strongly supports the principles of best practice regulation, and these are concisely stated in the Regulatory Impact Analysis Guide for Minister's Meetings and National Standard-Setting Bodies¹⁵.

Important in the considerations when setting standards is the articulation of a clear problem statement, an obligation to examine all policy options to address the problem (i.e. beyond regulation), and as far as possible providing a positive benefit/cost analysis.

The AFGC supports the IA identification of 4 Best Practice Elements but with the qualification that they should not be considered alternatives to the principles of best practice regulation as currently adopted by Australian governments.

Recommendation 14.

The AFGC recommends that the 4 best practice elements of regulatory systems identified by the Impact Analysis not diminish the important principles of best practice regulation as detailed in the Federal Government's *Regulatory Impact Analysis Guide for Minister's Meetings and National Standard Setting Bodies*.

Last paragraph, p 21

The IA discusses the opportunities for recognising indigenous cultures within the food regulatory system. The AFGC is supportive of further exploring how Australia's food regulation system might be reformed to encourage greater indigenous culture engagement in a similar way to current practices in New Zealand.

The AFGC supports further consultation addressing the practical aspects of providing specific recognition of indigenous cultures in the FSANZ Act, FSANZ operations and the wider food regulatory system, although this would need further resourcing of FSANZ.

Recommendation 15

The AFGC recommends that further consultation be conducted to determine how best to incorporate recognition of indigenous culture into the FSANZ Act, and the practical implications on FSANZ's operations including the impact on FSANZ's resource requirements.

Second last para, p30

The IA concludes its discussion on the purpose and objectives of FSANZ¹⁶ by noting that all but one of the 101 standards submitted to the FMM have been accepted and that FSANZ publishes all supporting documents supporting their decisions.

¹⁵ [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standards Setting Bodies \(pmc.gov.au\)](https://pmc.gov.au)

¹⁶ 3.1.7 Policy Problem 1. The purpose and objectives of FSANZ are not clear, p28.

The AFGC agrees that the amount of information that FSANZ provides supporting its decisions is copious providing a high degree of transparency for stakeholders. FSANZ also goes to considerable lengths to indicate how they have given regard to Ministerial policy guidelines, when relevant. Much of the information is highly technical which in many instances requires the reader to have a high degree of technical expertise. This, however, does not support the statement in the IA that:

“These resources.....are demonstrably either insufficient or inaccessible”

The statement is inaccurate and should be corrected.

Recommendation 16

The AFGC recommends that the Impact Analysis concludes that FSANZ provides comprehensive reasoning supporting its decisions, including how it gives regard to Ministerial policy guidelines, as demonstrated by its strong track record in having its recommendations accepted without review by the Food Ministers Meeting.

Second last paragraph, p37

The IA states:

“While the FMM and FSANZ have different roles, priorities, accountabilities and operations – which may mean a shared vision of system priorities is not feasible (or necessarily desirable..)”

The AFGC would argue that it is not only desirable but critical that the FMM and FSANZ have a shared vision of system priorities. According to the Food and Agriculture Organization a national food control system¹⁷ (which in Australia is the food regulatory system):

“...ensures that food available within a country is safe, wholesome and fit for human consumption, conforms to food safety and quality requirements and is honestly and accurately labelled as prescribed by the law. As such, food control systems protect the health and safety of consumers and help assure the safety and quality of foods being traded both nationally and internationally.”

To be effective, national food control systems require appropriate legal and institutional structures and adequate human and financial resources. They are informed by scientific evidence and facts, reflecting the technical complexity of interactions between food production, nutrition and human health. These conditions should favour alignment of priorities, not encourage misalignment. A lack of alignment regarding priorities between decision-makers would undermine the effectiveness of the food control system leading to poor outcomes for all stakeholders.

¹⁷ [Food control systems | Food safety and quality | Food and Agriculture Organization of the United Nations \(fao.org\)](https://www.fao.org/food-control-systems/)

Recommendation 17

The AFGC recommends that amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the Food Ministers Meeting.

Last section, p42

The IA rightly states that to enable critical reforms of the regulatory system support of the Australian, New Zealand and State and Territory governments, FSANZ and the food industry is required. Concerning the latter, the IA suggests the industry:

“Could disrupt its implementation through lobbying and public criticism if not supportive of the reforms.”

The AFGC is concerned that the IA fails to mention that the public health sector and the consumer movement are also stakeholders of the regulatory system, and they could be highly critical of proposed reforms.

The industry and the AFGC as the peak national body, has a strong, and demonstrable track record of working with the government to secure good policy and regulatory outcomes.

The AFGC requests reports of the current consultation and future documents related to the review of the food regulatory system broadens the range of stakeholders that may influence the implementation of regulatory reforms.

CONCLUSIONS

This is the 3rd formal submission the AFGC has made to the ongoing review of the ANZ food regulatory system. The current consultation’s Impact Analysis starts by confirming the ANZ food supply is safe and of high quality as a result of the well-functioning food regulation system, but that it requires urgent and substantial modernising.

The AFGC is hopeful that this submission will provide some direction to the next steps considering reform of the FSANZ Act will result in a step-change improvement in FSANZ operations which includes:

- clear appreciation of the public benefit of food regulation through government resourcing FSANZ as Australia’s and New Zealand’s leading repository of food and health scientific and regulatory expertise, with industry cost recovery restricted to when there is a specific service provided (e.g. expedited approvals, exclusivity),
- multiple pathways to regulatory approvals based on rigorous risk-based assessments and utilising the full range of regulatory measures (food standards, codes of practice, guides) available to FSANZ, and
- consistency in approach across food regulatory areas (composition, processes, labelling) which provides greater certainty to the industry regarding the formal processes to receive approvals for innovations in products and claims that can be made about their consumer benefits.

The AFGC stands ready to provide further clarification or feedback on any of the positions expressed in this submission as the Inquiry proceeds.

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Questions

Section 3 - The problems to solve

This section refers to questions in *Section 3 - The Problem to Solve* within the Impact Analysis, commencing on Page 20.

Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved? Please provide justification.

Free Text

The Australian Food and Grocery Council (AFGC) considers that the main problems, and stakeholder perceived problems, with the FSANZ Act, have been identified. The AFGC appreciates the attempt in the Impact Analysis (IA) to prioritise the issues through a quantitative methodology. Unfortunately, the methodology is not fully described in the IA. The only description is “..ratings have been compiled through an assessment of research and stakeholder engagement.” Further information should be provided such as:

- Who did the assessing? Was it a group of experts with legal, food industry, food science and public health skills?
- Were the ratings developed against an external standard or were the issues rated against each other, and then scaled? Was the scaling linear?

1 Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit

There are very sophisticated methodologies available for describing and analysing objectively, through questionnaires and surveys, issues which cannot be quantified directly. Derived from the psychology discipline, such methodologies can be used to assess the views, opinions and concerns of individuals and groups of individuals. They usually commence, however, with a clear research question, or series of research issues to be resolved. Depending on the issues, surveys or questionnaires will be developed to provide objective measures. For some issues, survey participants may be drawn at random from the population, on other occasions the survey may be of population sub-groups, or for specialist issues trained panels, or panels of experts may be employed.

There is no evidence provided in the IA that a robust methodology was established to prioritise the problems identified. Rather, the impression is given that the rating system was developed as an afterthought to attempt to prioritise issues identified.

Section 3 - The problems to solve (Ratings)

The questions on this page refer to the ratings listed in the Impact Analysis from page 30.

2 Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

3 Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit

The AFGC would rank the policy problems as follows:

1. [Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible.](#) Under-resourcing is FSANZ's greatest challenge along with legislated processes and decision making which leads to inefficiencies. These issues are addressed under this policy problem.
2. [Policy Problem 3 | Elements of FSANZ's operations are inefficient.](#) FSANZ's resourcing problems are also described again under this policy problem.
3. [Policy Problem 4 | Gaps and duplication of efforts challenge system agility.](#) Operational issues are highlighted under this policy problem. They can be addressed if other agencies in the food regulatory system are committed to aligning with FSANZ's roles and functions.
4. [Policy Problem 1 | The purpose and objectives of FSANZ are not clear.](#) This policy problem is derived from [some] stakeholders not familiarising themselves with the current arrangements which show that FSANZ can, and has, addressed long-term public health issues through amending the FSC.

Section 5 - Options for reform

This section refers to questions in *Section 5 - Options for reform* within the Impact Analysis, commencing on Page 44.

Component 2.1

Component 2.1 relates to the *Purpose and objectives of FSANZ*. This section contains questions for Components 2.1.1 to 2.1.3 on pages 49 to 50.

Component 2.1.1

Component 2.1.1 | The definition of 'protection of public health and safety' within the Act could be clarified to be in line with the current policy guidance (Page 49)

4 Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Additional comments (optional)

The AFGC rejects the notion that 'confusion' among some stakeholders regarding FSANZ's capability to address long-term issues is derived from the objectives of the FSANZ Act being unclear.

The AFGC contends that the confusion has arisen from stakeholders not being familiar with the current powers FSANZ has, and has exerted, as a standards-setting body to address long-term health issues.

4 Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Additional comments (optional)

The IA states (para 4, page29):

“In practice, food regulatory measures established by the Act are already being used to protect both short- and long-term health.”

Assuming FSANZ maintains its independence as a Statutory Authority and that its development of food standards is based on the best available scientific evidence and fact base, there is no reason why the clarification would materially affect FSANZ’s approaches to applications and proposals and the factors to which they give regard.

5 What would be the impact of clarifying the definition of ‘protection of public health and safety’ within the Act?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Additional comments (optional)

The AFGC considers there would be very little impact as the clarification would not affect the way FSANZ operates to any great extent, and not affect the overall levels of public health protection which is already at a very high level as recognised in the IA.

Examples of Standards which directly target specific public health issues (as opposed to public safety) include:

Standard 2.1.1- 5 Cereal and Cereal products which requires all wheat flour for bread making to be fortified with folic acid between 2 and 3mg/kg. This is to reduce the incidence of neural tube defects in the newborn – a clear *maternal* diet-related public health issue, rather than a food safety issue,

Standard 2.1.1 – 6 Cereal and Cereal products which requires iodised salt to be used for bread making. Noting that where salt is ordinarily used, the requirement is to replace the salt with iodised salt. This is to reduce iodine deficiencies in the general population which is a clear *chronic* diet-related public health issue.

Standard 1.2.8 – Nutrition Information requirements which mandates a Nutrition Information Panel on packaged food and other nutrition information requirements. This is to help consumers make informed choices and construct healthy diets – a clear long-term public health issue.

This demonstrates that FSANZ already targets public health issues in the development of Standards.

Component 2.1.2

Component 2.1.2 | There could be greater clarity around how ministerial policy guidance is reflected in the development of food standards (Page 49)

6 Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

7 How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit

There is already a substantial amount of information which is published during the standards development process which includes the consideration of the alignment between the Ministerial Guidelines and the Food Standards Code amendments.

The AFGC makes the point, however, that it is incumbent upon all stakeholders to make sure they familiarise themselves with the institutional arrangements and operations of the food regulatory system and how its outcomes are disseminated. Without this, stakeholders will be at a disadvantage and less able to sensibly engage with the standard development process.

The AFGC considers, however, that some consideration could be given to how changes to the food regulatory measure might be more effectively communicated. For example

1. In the documentation FSANZ prepares which summarises the evidence and bases of its recommendations to amend (or not) the FSC more detail could be provided on which Ministerial Guidelines it considered, and which parts of the guideline were relevant to the application. FSANZ could also describe the reasons for it both aligning closely with the guideline, or deviating from the guidelines when this occurs, and
2. The Ministerial Communiqués and other documents which are released after meetings of the Food Ministers' Meeting (FMM) could provide more specific information as to which policy guidelines had been considered, and how the amendment aligned, or did not align, with the relevant guideline.

Component 2.1.3

Component 2.1.3 | Language within the Act could be updated to be more culturally inclusive (page 50)

8 Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that there is scope to amend the FSANZ Act to provide FSANZ with the opportunity to recognise Indigenous culture and expertise.

The AFGC considers these warrant further extensive consultation including discussion of the potential resource requirements of FSANZ to effectively address Indigenous culture issues.

9 What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no views to express at this stage.

Component 2.1

10 Are there other initiatives that should be considered in Component 2.1?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Component 2.2

Component 2.2 relates to *Reform standing-setting*. This section contains questions for Components 2.2.1 to 2.2.6 on pages 51 to 56.

Component 2.2.1

Component 2.2.1 | A risk-based framework and approach could be introduced to guide the development of food regulatory measures (Page 51)

11 Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

FSANZ already takes a risk-analysis approach to assessing applications. However, the AFGC considers there is a strong case for the development and implementation of a more explicit practical risk-analysis framework which determines the degree of regulatory oversight and requirements of paths to market for new foods, new technologies and new claims about them.

12 What criterion and/or evidence should be used to form the basis of a risk framework?

The AFGC supports the proposed Indicative risk framework (Impact Analysis, Table 10, p 51), but considers the following additional factors should be explicitly considered in the framework *vis*:

- is the subject substantially the same as an issue previously considered by FSANZ? If so, a fast-track pathway should be considered. For example, FSANZ has approved close to 100 foods derived from gene technology most of which are very similar in the way they are developed. A fast-track approval process should apply in these cases.
- has the subject already been assessed as having negligible risk by an overseas relevant, competent authority (such as Health Canada, the Food and Drug Administration, the European Food Safety Authority)?
- has regulatory approval been provided by an overseas, relevant authority, and has the approval included risk-management provisions?
- are there risks to Australia's reputation which might impact trade or implications to Australia's position as a signatory to the World Trade Organization agreements? and
- has an established presence in overseas markets been confirmed with no public health or safety concerns being identified?

Similarly, a FSANZ risk-based framework could extend to conducting a risk assessment of the applicant when the application is initially considered of moderate risk.

For example, if the applicant had established a track record of submitting applications of similar complexity which met all the requirements of the FSANZ Application Handbook, had been assessed and recommended with no requests from FSANZ for further information, and had no objections or concerns raised from stakeholders (particularly jurisdictions), and FFM approvals had readily been provided, that applicant, as well as the application, would qualify as being 'lower risk'. As a result, the application might be directed down a 'low-risk' pathway to approval.

13 What would be the impact of introducing a risk-based framework to guide the development of food regulatory measures for you?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to answer / I don't know

Free text box, no character limit

The benefits of such a framework would include:

7. stakeholder alignment on the necessity, or not, for regulatory interventions and the nature and degree of attention for proposed interventions and amendments (applications or proposals) to the FSC
8. more efficient allocation of FSANZ staff resources
9. enhanced enforcement priorities and resource requirement decisions by the jurisdictions
10. greater confidence for public health and consumer groups that regulatory resources are being devoted to priority areas
11. greater certainty for the industry in the outcome when seeking to bring innovative food technologies, novel foods and claims to market,

12. a surer path to proportionate regulatory responses from the food regulatory system consistent with best practice regulation principles, and
13. simpler FSC amendments would be more accessible to small businesses due to reduced resource and cost requirements of preparing applications.

Component 2.2.2

Component 2.2.2 | New pathways to amend food standards could be introduced (Page 52)

14 Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Many innovations (new foods, food additives, processing aids) are developed and commercialised overseas. They are approved by competent authorities employing risk-based approaches to assess scientific evidence and fact-based in the public domain with additional information and technical data provided by the innovating company (some of which may be commercial-in-confidence).

FSANZ already has Memorandums of Understanding with overseas regulatory authorities in the USA, UK, and EU and has reported a close collaboration on some issues with Health Canada.

Clearly, exchanging information would be advantageous to FSANZ when assessing applications for new technologies which have already been approved overseas. It has the potential to spare FSANZ resources; simplify the regulatory assessment process; provide more certainty for the industry; improve processes and products for the industry, and provide better products, sooner for the benefit of consumers.

15 Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that through formalising links with international regulatory agencies, FSANZ could establish bi-lateral or multi-lateral agreements harmonising risk-based approaches necessary for, and the conduct of, pre-market approvals.

By specifying the key elements of such approaches regulatory agencies could realise substantial efficiency gains in their individual operations whilst strengthening the overall rigour of approval processes and enhancing confidence that truly proportionate regulatory response would result.

As a result, the industry would have more certainty of regulatory outcomes for its innovations, and the community and government would have more certainty that appropriate levels of protection of public health and safety were being applied.

In reality, recognising international standards would never be fully 'automatic'. FSANZ should maintain an oversight process.

The AFGC considers it important that some, if limited, opportunity for stakeholders to be consulted or raise concerns about an application should be retained for FSANZ's 'automatic' approvals of international standards. This might be as simple as providing a short review period of the standard prior to FSANZ recommending it to the Food Ministers' Meeting (FMM) to allow objections or concerns to be raised.

16 Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that a risk-based approach would include a pathway for very low-risk innovations. A triaging mechanism comprising a series of questions would be one option for establishing a minimal check pathway.

17 Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that the FSANZ Act could be amended to include principles which explicitly permit FSANZ to use risk-based approaches for handling applications and proposals.

The wording, however, will need to be carefully crafted to ensure close alignment with FSANZ's objectives. Furthermore, the principles must not be too prescriptive, with an outcomes focus.

FSANZ needs to be able to exercise its judgement and be flexible against the backdrop of a constantly revising body of scientific evidence around the nexus of food, nutrition and health.

FSANZ also should be permitted to create other pathways to amend food standards to contribute to future-proofing the FSANZ Act by maintaining an agile food regulatory system in response to future food industry innovation.

18 What would be the impact of introducing new pathways to amend food standards for you?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

Clearer, risk-based pathways to regulatory approvals for manufacturing processes, products, and product claims will incentivise AFGC members to innovate. This will help maintain and enhance their competitiveness in global markets (domestic and overseas) and contribute to the resilience of the food manufacturing sector overall.

19 Are there other opportunities relating to new pathways to amend food standards that should be considered?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers there are a number of risk-based pathways to regulatory approval. They include:

1. Greater use of Codes of Practice. Complying with a voluntary industry Code, voluntary (for signatories) prescribed industry Code or mandatory prescribed industry-prescribed Code are all examples of lower-risk pathways to regulatory approval.

There are a number of ways in which Codes of Practice may operate. For example, the FSC could state that for a certain issue (e.g. low-risk voluntary labelling statements) companies should comply with a specified industry-developed Code. This would provide authority in the Code requiring compliance.

The AFGC would welcome FSANZ giving more consideration to the use of Codes of Practice as an alternative pathway to food standards as an efficient regulatory measure.

2. Notification. The current notification system for general level health claims could be extended to other low-risk issues. For example, processing aids could be moved to a notification system with companies required to hold technical data substantiating that the processing aid has its declared technical function in a particular food manufacturing process for which approval is being claimed, and that is safe. This could be modelled on the USA's FDA Generally Recognized as Safe notification system.

3. International approvals. A pathway where FSANZ reviews and concurs with the international approval documentation would be appropriate for low- medium risk applications.

4. As described in an earlier response (above) a FSANZ risk-based framework and pathway to approval could include conducting a risk assessment of the applicant. For example, if the applicant had established a track record of submitting applications which met all the requirements of the FSANZ Application Handbook, had been assessed and recommended with no requests from FSANZ for further information, and had no objections or concerns raised from stakeholders (particularly jurisdictions), and Food Ministers'

Meeting approvals had readily been provided, that applicant, as well as the application, would qualify as being 'lower risk'. As a result, the application might be directed down a 'lower-risk' pathway to approval.

Component 2.2.3

Component 2.2.3 | Decision-making arrangements could be streamlined (Page 54)

20 Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Delegating decision-making from the FSANZ to the CEO would certainly be more efficient and particularly so for low-risk applications. The AFGC supports proposals in the IA for this delegation. It would, however, have a minimal effect on FSANZ's flexibility. FSANZ legislated processes need to be amended to materially increase FSANZ's flexibility.

The AFGC doubts whether delegating decision-making from the Food Ministers' Meeting (FMM) to FRSC members or other senior bureaucrats would improve flexibility or efficiency. FRSC already plays a central role in the food regulatory (policy) system.

Unlike other elements of the system, FRSC dealings are generally behind closed doors with little stakeholder engagement and limited reporting of their joint deliberations. There is also no record of the individual briefings FRSC members or other bureaucrats provide to their respective ministers. Thus, delegating decision-making does not provide more flexibility or efficiency but risks introducing more opaqueness to the decision-making process.

21 What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit

The key determinants for reliable decision-making include:

1. clearly defining the nature and boundaries of the risks being assessed. In the case of food standards, there is an enormous body of knowledge contributing to the understanding of food safety hazards and diet-related risks to human health
2. methodologies for quantifying risks [associated with food consumption – type; amount] based on exposure to the risk both at the individual and population level. FSANZ has sophisticated toxicology, microbiology and nutrition risk assessment processes which include risk assessments in population subgroups based on dietary modelling
3. incorporating the understanding of basic biological processes and the concept of grades of evidence and certainty informed by appropriate statistical analysis
4. agreed and consistent risk acceptance levels incorporating a cost/benefit assessment

- 5. a risk assessment and risk-management process which can minimise the absolute risk of any decision made
- 6. a multi-skilled workforce possessing the experience, expertise and understanding of their legislated authority, allowed to manage the decision-making processes without fear or favour from outside influences, and most importantly
- 7. clear identification of where the authority to make decisions is delegated, noting that responsibility is not able to be delegated. Thus, the ultimate responsibility for decisions to amend the FSC would remain with the Food Ministers' Meeting (FMM).

22 What would be the impact of streamlining decision-making arrangements for you?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The change in streamlining decision-making would assist AFGC members (i.e. food manufacturing companies) by accelerating the speed of approval of low-risk applications.

23 What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit

In the case of delegating decision-making to the FSANZ CEO, the AFGC considers the CEO should have broad-ranging expertise encompassing a good understanding of the scientific disciplines informing the FSANZ approval processes, an in-depth knowledge of the food system including the complexity of the food industry, a comprehensive understanding of the food policy and regulation institutional and legislative framework, and an appreciation of the political dimensions of food regulatory policy.

The AFGC does not support the Food Ministers' Meeting (FMM) formally delegating decision-making to FRSC members or other members of state and territory bureaucracies.

Notwithstanding this, the AFGC appreciates that the FMM is heavily reliant on advice from the bureaucrats and that the officers involved in that advice would collectively have the types of skills described above for the FSANZ CEO.

Component 2.2.4

Component 2.2.4 | Legislative change and greater guidance material could support bringing more traditional foods to market (Page 55)

24 Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no considered views on this issue at this time.

25 Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

The AFGC has no considered views on this issue at this time.

Component 2.2.5

Component 2.2.5 | FSANZ can be resourced to undertake more timely, holistic and regular reviews of standards (Page 55)

26 Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

27 Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Holistic reviews of food standards alone are restricted in their scope by legislation and the other parts of the food regulatory system. Holistic reviews of the Food Standards Code can therefore only cover issues such as whether specific existing approvals, permissions and restrictions are still warranted, and whether additional regulatory interventions are required. To some extent, this can be informed by FSANZ's role in surveillance of the food supply. This can also be informed by other testing of the food supply such as the National Residue Survey performed by DAFF. Additional data collection such as the incidence of foodborne disease or the number of food-related anaphylaxis cases may also indicate a need for greater regulatory intervention.

The reality is, however, that a substantial holistic review of food standards should be part of a review of the food regulatory system in its entirety.

While the current Review of the FSANZ Act is part of a broader review of the food regulatory system, the AFGC considers that by dividing the broader review into components an opportunity has been lost for some more holistic changes to the system. For example, providing FSANZ with an enforcement role for some components of the Code (e.g. labelling) should be within the scope of a system-wide review, but it is ruled out by the restricted scope of the review of the FSANZ Act.

The AFGC notes that even before the Impact Analysis consultation commenced, a number of issues identified in earlier consultations had been dismissed from further development. The AFGC supports some of the exclusions as they sit outside the food regulatory system and are well addressed in other policy and regulatory frameworks (e.g. food fraud, sustainability).

“Several ideas have been explored but formally excluded from further analysis by the Food Ministers’ Meeting (FMM). These include:

- The objectives of FSANZ could be expanded to recognise trade as a core goal FSANZ is designed to support.
- Criteria could be established in the Act that the FMM must meet to request a review of a draft regulatory measure.”

The AFGC encourages further consideration of both of these topics.

Component 2.2.6

Component 2.2.6 | Codes of Practice and guidelines could be increasingly used to complement food standards (Page 56)

28 Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

29 Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit

In the 1990’s there was a Code of Practice on Nutrient Claims jointly managed by FSANZ (when it was ANZFA) and the AFGC. It was relatively successful in moderating the nutrient content and function claims made by the industry. It fell into disuse when FSANZ was created and started to actively commence the development of a health claims standard. The AFGC recommended the continuation of a Code of Practice of nutrient claims and general level health claims, but FSANZ determined that it was necessary to regulate those claims along with high-level health claims. Standard 1.2.7 Nutrition, health and related claims was gazetted in 2013 which included the notification system for general level health claims and a ‘level of evidence’ bar.

This was a clear example of a Code of Practice system which could have been enhanced by being referenced in the FSC.

30 How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit

Codes of Practice or guidelines should be restricted to regulating low – moderate risk issues, with the latter requiring stricter codes. All codes do, however, require a management framework which is supported either by the government or by industry.

The framework should include a clear process with stakeholder engagement for the development of the Code, its positioning relative to other regulatory instruments (e.g. the Food Standards Code), mechanisms for its review, compliance, enforcement and sanctions provisions and complaint resolution procedures. These are the basic features for a Code of Practice to operate as a successful alternative to a food standard.

The Australian Competition and Consumer Commission (ACCC) has comprehensive information about Codes of Practice, both mandatory and voluntary, and how they work - <https://www.accc.gov.au/business/industry-codes>

31 What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

There are a number of successful Codes of Practice used by the food industry to guide industry to responsible behaviour which might otherwise require regulation. The overall impact is an alignment of community expectations and a reduction in regulatory burden for both industry and government enforcement agencies. Examples include the Australian Association of National Advertisers self-regulation marketing codes which includes a 'hands-off' independent complaints resolution mechanism under Ad Standards.

A further example is the *Grains & Legumes Nutrition Council's (GLNC) Code of Practice for Whole Grain Ingredient Content Claim*. In 2013, the GLNC, which is an industry association representing cereal manufacturers, established this voluntary Code which is intended to guide the use of whole grain ingredient claims, on food labels in Australia and New Zealand.

The Code provides clear, consistent messaging on the whole grain content of foods helping consumers make informed choices. It was developed in consultation with regulators and the wider community in response to the absence of a FSC standard to regulate the use of whole grain content claims on food labels. It is a model of how an industry code can work successfully as an alternative to black-letter law benefiting the industry, consumers, and government.

Component 2.2

32 Are there other initiatives that should be considered in Component 2.2?

Please select only one item

- ✓ Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The Australian Competition and Consumer Commission (<https://www.accc.gov.au/business/industry-codes>) describes a spectrum of risk-based regulatory interventions comprising black-letter law (e.g. food standards), prescribed mandatory Codes of Practice, voluntary codes of practice and best practice guides.

FSANZ should have the flexibility of developing regulatory interventions which best suit the problem or issue to be addressed. It makes good sense from a regulatory policy point of view, it is consistent with the deregulation agenda which governments seek in trying to improve the efficiency of regulatory frameworks, and it helps to make industry sectors more productive.

Component 2.3

Component 2.3 relates to *Efficient and Effective operations*. This section contains questions for Components 2.3.1 to 2.3.4 on pages 57 to 62.

Component 2.3.1

Component 2.3.1 | Outstanding recommendations from the 2014 review of the FSANZ Board could be implemented (Page 58)

33 Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Please select only one item

- ✓ Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Good governance practices recommend relatively small, independent, skills-based Boards. The AFGC supports this approach for FSANZ.

There is no doubt, the FSANZ Board should have individuals who collectively can cover a range of key scientific disciplines – consumer science, public health nutrition, food science, food safety etc., coupled with experience working in, and wide knowledge of, the agriculture, food and food retail industries. However, skills in finance, audit, risk management, and human resources are also important skills for a Board.

A smaller Board is more likely to come to unanimous decisions quickly improving efficiencies in the FSANZ processes. In addition, they are more likely to operate cooperatively and be open to innovative ideas for how FSANZ might operate.

34 Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Please select only one item

- ✓ Yes
- No
- Prefer not to answer / I don't know

Free text box, no character limit

The AFGC does not consider Board nominations should come from individual organisations. This could mitigate real or perceived views of Board members coming with their own fixed agendas determined by the nominating organisation.

Open market recruitment processes would greatly increase the pool of possible candidates resulting in the appointment of highly skilled individuals which increases the chance of appointing a Board with the full suite of expertise and experience required to oversee the operations of a complex organisation like FSANZ.

Component 2.3.2

Component 2.3.2 | The expedited approvals pathway could be removed to address workload prioritisation (Page 59)

35 What would be the expected impact of removing the option for applications to be expedited?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

Removal of the expedited pathway for applications would result in an extension of the average time of an application to be processed by FSANZ.

The payment of the fee affects neither the rigour of the approval assessment nor the outcome, rather just expedites when the assessment commences. The cost-recovered fee is justified to enable additional (staffing) resources to FSANZ so that the expediting the application (or applications where an exclusive capturable commercial benefit is conferred) does not impact FSANZ's ability to progress other applications and proposals on their work plan.

For companies, the main impact would be a greater level of uncertainty in the 'speed to market' for new products which require approvals. This can have a chilling effect on innovation with all the concomitant follow-on effects on competitiveness and productivity of the food manufacturing sector and reduced choice benefits for consumers.

Component 2.3.3

Component 2.3.3 | To generate more sustainable revenue, cost recovery could be expanded for work that benefits the industry (Page 59)

36 What would be the expected impact of the implementation of an industry-wide levy?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The immediate impact of the levy would be an increase in food prices as manufacturers seek to pass on the cost of the levy and the additional administrative cost of paying the levy.

There would also be an impact on the Federal Government's budget associated with the costs of drafting and passing new legislation and then setting up the administrative processes for collecting the levy. There would be continued administrative costs associated with the ongoing collection of the levy.

The AFGC strongly opposes the IA suggestion of imposing an industry levy on the largest 5,000 food companies to meet the current estimated shortfall in FSANZ funding of \$10m p.a. based on:

4. **equity** – imposing a levy on a portion of the food industry based on arbitrary criteria (size of levy, turnover ranking of company) is fundamentally inequitable
5. **efficiency** – the \$10m FSANZ shortfall is relatively small compared to the overall Federal budget. It is likely that the bureaucratic cost of collecting the levy, and the cost to industry of paying it (setting up payment facilities etc) would surpass the amount collected, and
6. **practicality** – identification of the 5,000 businesses to be levied would be difficult as there is no database which identifies food industry businesses and ranks them by turnover. To be clear, the food businesses which are regulated by the FSC extend from primary producers to distributors, ingredient manufacturers, food product manufacturers and retailers (restaurants, hotels, pubs, clubs, fast food outlets, convenience stores and supermarkets). Identifying which businesses would be captured would be problematic in the extreme. Furthermore, there is no mechanism to collect the levy. According to the *Australian Government Cost Recovery Policy*⁹ levies raised by statutory authorities such as FSANZ require separate Taxation Acts which themselves would have to align with the Government's broader taxation policy.

37 How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit

It is essentially impossible to introduce an industry levy that is fair, consistent and feasible to administer.

The food industry comprises businesses ranging from primary producers through to retail, with [almost] all players being covered by FSC requirements, and all of them benefiting (as does the wider community) from the food regulatory system. Attempting to impose a levy on a limited industry subgroup would introduce unfairness and inequity issues, depending on where the lines were drawn. This would lead to a lack of consistency and difficulties and greater costs in administration.

The public good nature of food regulation is well recognised, as the recognition that public funding of public good from the government's general revenue is cheaper than funding by industry levies. For an industry where there is no existing levy system, there will be a substantial administrative cost (Productivity Commission, *Towards levyanthan? Industry levies in Australia*, Appendix F: 15).

38 What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit

There is not an acceptable range for a levy rate given the anticipated high administrative cost and the resulting inefficiency, and inequity resulting from the levy should it be imposed.

39 What would be the expected impact of compulsory fees for all applications?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

The current system provides flexibility for companies to consider the most efficient way to bring innovative products which might require regulatory approval to market. For some companies speed to market is not critical so removing the 'no fee' option would increase substantially their costs, assuming fee levels are similar to those currently imposed by FSANZ for expedited applications.

It should also be remembered that parties (individuals, and organisations) other than industry can lodge applications to amend the FSC. The imposition of a fee for all applications would be a barrier to those organisations as well.

40 Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC considers that attempting to design, launch, promote and sustain a commercial service would distract FSANZ from its core objectives and purpose.

Of the activities suggested in the IA, there are existing organisations in the private sector which are operating and are very successful at providing value for money. It is highly unlikely that FSANZ could do a better job and be profitable. In addition, there are significant conflicts of interest possibilities having a regulator both assessing regulatory approvals for a company and seeking to sell an additional service to the company.

Component 2.3.4

Component 2.3.4 | Some services could also be cost recovered from government agencies (Page 61)

41 Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC is not privy to the costs on FSANZ or other agencies of the current food recall arrangements and so is unable to comment.

42 How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit

The AFGC is not privy to the costs on FSANZ or other agencies of the current food recall arrangements and so is unable to comment.

43 Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Free text box, no character limit

The AFGC is aware that on occasions the States and Territories request FSANZ to undertake work not directly related to applications. These may be associated with proposals FSANZ has raised or other projects.

The AFGC considers it appropriate that the States and Territories should fund these requests. This would impose a greater discipline on States and Territories reducing the chance of poorly considered requests which would unnecessarily expend FSANZ resources.

With regard to self-substantiated health claims it is recognised that FSANZ has greater expertise and resources to assess compliance, as it involves assessing the scientific and technical information supporting the notified health claim, but the jurisdictions have the legislated responsibility. This was recognised as an issue in 2013 when the Std 1.2.7 was gazetted.

The AFGC considers a sensible and pragmatic solution would be for FSANZ to provide a general level health claim 'monitoring service' to the jurisdictions for a fee, leaving the final decision on whether claims are compliant with the Standard to the jurisdictions.

44 What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

45 How would this need to be implemented to be successful?

Free text box, no character limit

46 Would it be better to charge a levy per recall or an annual levy?

Please select only one item

Per recall Annual Levy Other

Free text box, no character limit

47 What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Please select only one item

- Positive
- Neutral
- Negative
- Prefer not to respond / I don't know

Free text box, no character limit

Greater consideration of resource impacts and costs to FSANZ when jurisdictions seek additional work on proposals or other regulatory activities.

48 How would this need to be implemented to be successful?

Free text box, no character limit

The Food Regulation Agreement would need to be amended to make it clear that there was an expectation on jurisdictions that they would fund FSANZ activities under certain conditions (to be specified). There would also need to be an amendment to the FSANZ Act permitting FSANZ to seek funds from jurisdictions under specified conditions for some activities.

Component 2.3

49 Are there other initiatives that should be considered in Component 2.3?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Component 2.4

Component 2.4 relates to *Improving system agility*. This section contains questions for Components 2.4.1 to 2.4.7 on pages 62 to 66.

Component 2.4.1

Component 2.4.1 | Mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting could be implemented (Page 63)

Related information FMM - Food Ministers' Meeting

50 Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting lead to a shared vision of system priorities?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

51 How would this need to be implemented to be successful?

Free text box, no character limit

The AFGC recommends that amendment of the FSANZ Act continues to support structures and processes in the food regulatory system which encourages alignment of vision and agreement of purpose between FSANZ and the Food Ministers Meeting.

The fact that shortcomings have been identified during the review of the FSANZ Act and detailed in the Impact Analysis is a concern.

It should be noted that a range of approaches are already available, and some are currently used for consultation between FSANZ and FFM. Additional approaches are possible if there is goodwill to pursue them by the relevant parties. This does not require legislative change.

Regardless, it is imperative that whatever mechanism is explored, FSANZ maintains its independence as a Statutory Authority and its development of food standards is in alignment with the Act based on the best available scientific evidence.

52 What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit

The proposed factors for a joint prioritisation matrix should include:

1. public health statistics including emerging food safety issues both in Australia and overseas which may have regulatory implications,
2. an update on food industry economic trends and regulatory implications.
3. overseas regulatory development including approvals for novel technologies

Note that the agreement to the joint prioritisation matrix by FSANZ should not subvert or override FSANZ's independence as a Statutory Authority in decisions regarding particular applications or proposals.

53 In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit

FRSC is the main conduit between FSANZ and the Food Ministers' Meeting (FMM) so many of the 'operational' issues should be dealt with by better coordination between FRSC and FSANZ.

In addition, however, the AFGC suggests that the FSANZ Board meets with the FMM regularly – perhaps once a year so that there can be a better, more coordinated development of a food regulatory strategy.

Component 2.4.2

Component 2.4.2 | FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of food standards (Page 63)

Related information FMM - Food Ministers' Meeting

FRSC - Food Regulation Standing Committee

54 Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC is not privy to the current arrangements for engagement between FSANZ and FRSC but ideally, it would be regular, driven by a common purpose of developing the best possible regulatory system, and cordial.

55 What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit

The AFGC has no comment.

Component 2.4.3

Component 2.4.3 | FSANZ could take guardianship over key food safety databases (Australia only) (Page 64)

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

FSANZ may have a role in maintaining some databases directly relevant to its function as a Statutory Authority. There are, however, many databases which have value beyond informing regulatory issues. There is no reason they cannot be held in other agencies -e.g. Department of Health and Ageing to inform health policy development.

FSANZ is already resource-constrained and the AFGC would recommend issues with resourcing its current objectives and functions should be resolved before additional responsibilities are added to its resource demands.

56 What types of data would be most useful for FSANZ to curate?

Free text box, no character limit

FSANZ should maintain records of food recalls (root causes, impact and resolution); food composition tables (including branded food composition) to support dietary modelling important for risk assessment purposes; and Total Diet Survey data.

Component 2.4.4

Component 2.4.4 | Further work could be done to establish information-sharing arrangements with international partners (Page 64)

57 Would establishing information-sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC strongly supports FSANZ maintaining strong links with internationally relevant, competent authorities. Information sharing strengthens FSANZ's ability to maintain and develop the FSC by keeping up to date on scientific and regulatory issues, best regulatory practices and emerging issues in the food industry which may have implications for public health and require regulatory attention.

58 What should be the focus of such information-sharing arrangements?

Free text box, no character limit

The AFGC considers the most valuable information sharing would be on comparing and aligning risk assessment and risk management approaches. This would underpin the confidence in recognition of approvals for new technologies and claims across international jurisdictions.

Component 2.4.5

Component 2.4.5 | Statements of intent could be introduced into the Food Standards Code to assist with interpretation and enforcement (Page 65)

59 Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The legal status of a Statements of Intent would need to be clarified. Statements of Intent in the FSC would only improve consistency of interpretation and enforcement if they were agreed upon by the jurisdictions during the development of standards, and not inserted after the standard was approved by the Food Ministers' Meeting (FMM).

It should be noted that jurisdictions will always retain the authority to interpret standards and their pursuant regulations as they see fit. Implementation is supposed to be coordinated by the Implementation Subcommittee for Food Regulation which may also have a role in finalising Statements of Intent.

Their development should be consulted on as part of the standards development process.

56 What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit

The Statements of Intent should provide information which is not obvious from the reading of the FSC itself. It might paraphrase the standard in simpler words. It may also provide examples of how food products would comply with the standard.

It should be noted that in earlier forms of the FSC technical notes were included. These were later removed as they were considered to potentially undermine the meaning of the standards which would then make enforcement more difficult for the jurisdictions. So Statements of Intent need to be absolutely aligned in meaning with the FSC standards so that enforcement issues are not created.

Component 2.4.6

Component 2.4.6 | FSANZ could be resourced to develop, update and maintain industry guidelines to guide the interpretation of food standards (Page 65)

57 Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Any additional information or guidance to industry on how to comply with the FSC would be useful.

Such guidance would need to be developed with the participation of the jurisdictions as it would have to reflect their views on the interpretation of the FSC for enforcement purposes. Securing such participation and alignment might be difficult, but if guidelines were published and kept up to date, they would be a valuable resource for the industry.

58 Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

Component 2.4.7

Component 2.4.7 | FSANZ could collaborate more regularly with jurisdictional enforcement agencies (Page 66)

59 Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Clearly, collaboration between FSANZ and the enforcement agencies would help improve consistency.

This consultation on the Impact Analysis might include examining the nature of the relationship between FSANZ and the jurisdictions and what might be done to foster goodwill between the different agencies.

Component 2.4

60 Are there other initiatives that should be considered in Component 2.4?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

Section 6 - Net Benefit

This section refers to questions in *Section 6 - Net benefit* within the Impact Analysis, commencing on page 68.

60 Are there other costs and benefits that have not yet been qualified or quantified?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit

The AFGC has no data on the potential growth of a First Nations food sector.

61 What are the current delay costs to industry?

Free text box, no character limit

The AFGC has not collected data on this type.

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Please select only one item

Yes No

Free text box, no character limit

62 Any other comments regarding the Option 1 information in the Net Benefit section?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

Section 6 - Net Benefit (Option 2)

The questions on this page refer to the information in Option 2 in the Impact Analysis from page 72.

63 Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

64 Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Please select only one item

Yes No

Free text box, no character limit

The AFGC has no additional data.

65 Any other comments regarding the Option 2 information in the Net Benefit section?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The IA concedes the difficulties in identifying and assigning monetary values to the costs and benefits.

The AFGC agrees and notes that at best the benefit/cost ratios are indicative that Option 2 contains elements which provide a greater overall benefit than Option 1. This is not surprising as the IA describes a number of changes to the FSANZ Act and FSANZ operations which will improve the efficiency of developing food standards which would indicate the benefits of Option 2 are greater than Option 1, and the costs less.

Section 8 - Best option and implementation

This section refers to questions in *Section 8 - Best option and implementation* within the Impact Analysis, commencing on Page 87.

Section 8 - Best option and implementation (Solving policy problems)

The questions on this page refer to the extent to which options solve the policy problems in the Impact Analysis from page 89.

66 Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has concerns regarding the methodology - the IA attempts to objectively assess Option 1 (*status quo*) against Option 2 (many changes) by putting numerical values to the sub-elements of each Option.

Given the essentially subjective nature of assigning values, this approach is somewhat self-fulfilling. Suggestions for improvement listed under Option 2 are bound to score better than Option 1 arrangements.

67 Is the rating assigned to each of the sub-problems appropriate? If not, why?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Repeating the point made immediately above, the AFGC has concerns regarding the methodology - the IA attempts to objectively assess Option 1 (*status quo*) against Option 2 (many changes) by putting numerical values to the sub-elements of each Option.

Given the essentially subjective nature of assigning values, this approach is somewhat self-fulfilling. Suggestions for improvement listed under Option 2 are bound to score better than Option 1 arrangements.

Section 8 - Best option and implementation (Delivery risks)

The questions on this page refer to the delivery risk in the Impact Analysis from page 94.

68 Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has concerns that the categorisation may be mistaken for a robust objective assessment of the Options and a misinterpretation that they are a reliable basis for further development of Option 2 and recommendations for amendment of the FSANZ Act.

For example, the analysis of the option for an industry levy is simplistic and fails to consider the well-established principles of taxation to which Australian governments [generally] adhere. Apart from the inequity of a tax system which relies on an arbitrary cut-off (which the IA has proposed) there is no consideration of the administrative costs of collecting the levy. This is a major omission which undermines the sole argument supporting the industry levy – namely that it is an alternative to government funding.

69 Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

As stated elsewhere in this consultation, the AFGC has concerns with the methodology which assigns objective (i.e. numerical) measures to issues based on a subjective opinion. Those concerns are compounded when the measures are then used as overall ratings for prioritising further work or recommendations.

70 Are there any other factors that should be captured in a future evaluation?

Please select only one item

The AFGC has no further comment.

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

Other comments

80 Is there anything else you want to share with us on the Impact Analysis?

Please select only one item

- Yes
- No
- Prefer not to respond / I don't know

Free text box, no character limit

The AFGC has no further comment.

Do you want this submission to be treated as confidential?

NO

Please select only one item

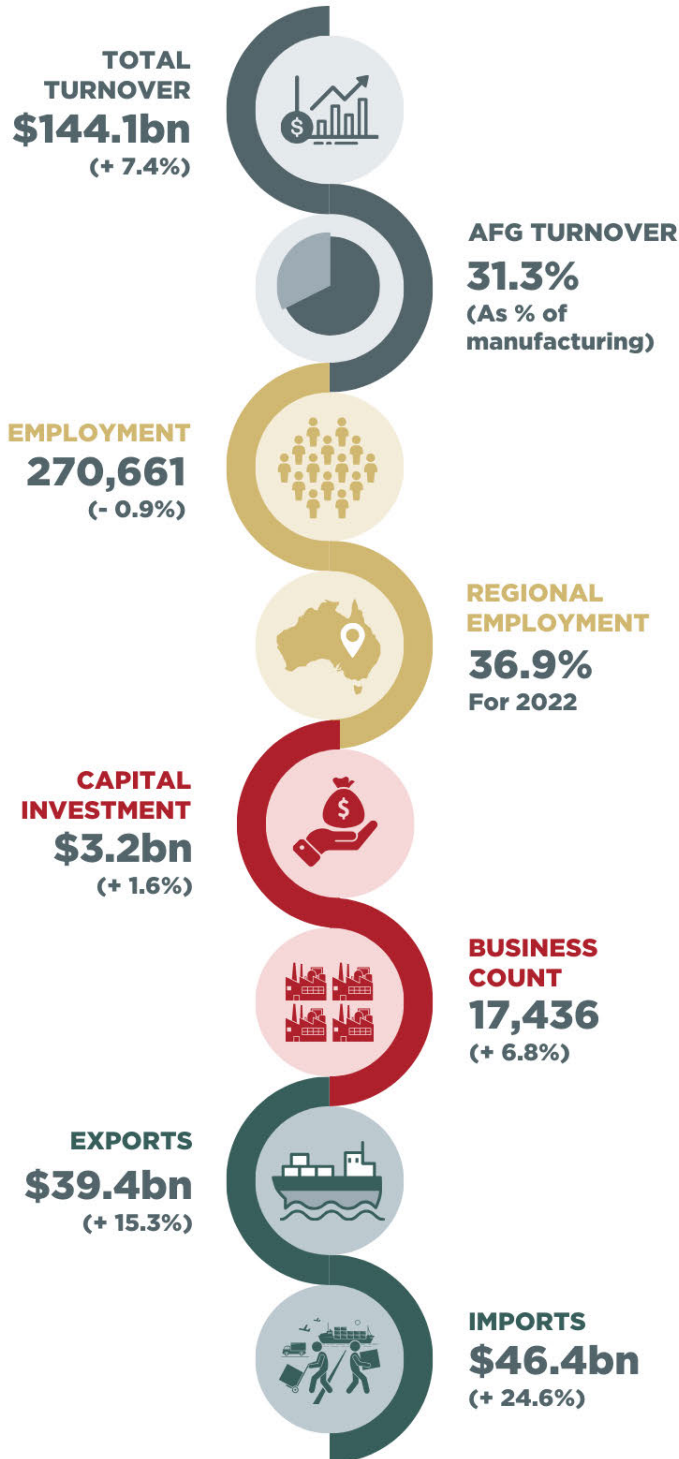
- Yes. The entire submission is confidential
- Yes. Some parts of the submissions are confidential No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit

State of Industry 2021-22

AUSTRALIAN FOOD & GROCERY COUNCIL



AUSTRALIAN FOOD & GROCERY COUNCIL

The figures on this page exclude the fresh food sector and are based on 2021-22 ABS data.

1: This is total number of employees, head count basis and does not include seasonal employees.

2: Gross fixed capital formation for food, beverage and tobacco manufacturing subsector is taken as indicator of capital investment.

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 19:09:00

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Jennifer Hocking

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
Australian Breastfeeding Association

Which sector do you represent?

Other (please specify)

Other: :
Breastfeeding information, support and advocacy

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:

There are problems with clarity about the purpose of this review. The focus in the IA appears to be about efficiency in the system - indeed the Exec summary states that the review's purpose is to produce a "reform package that will lead to more efficient and effective regulatory outcomes." However, we strongly believe that the main concern with the current system is that it is failing to protect consumers from long-term health impacts and preventable diet-related diseases. This is a primary objective of FSANZ, however it is not mentioned in the IA and as a result the methodology completely fails to factor this in.

We remain concerned with the approach undertaken to identify and prioritise policy problems. While the problems have been updated since the draft Regulatory Impact Statement in early-2021, this has not been well documented. Little detail has been made available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

The current methodology fails to identify a key policy problem that needs to be solved - that the Act in its current form does not enable the food

regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices, as raised by the majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021). Instead, the current methodology, in policy problem 1, has focused simply on incorporating a definition of public health to minimise external stakeholder confusion about FSANZ's existing roles and operations. Whilst this is a necessary step it is insufficient to deal with the actual policy problem. As a result, the entire IA fails to adequately address how FSANZ can and should address long-term health and preventable diet-related disease. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we propose that a Public Health Test be incorporated into the Act (see our response to the question in relation to other initiatives under component 2.1 for more details).

Policy problem 2 also fails to adequately include the problem that there are unnecessary time and cost burdens to consumers and governments as a result of FSANZ not undertaking more standard reviews and proposals and doing so in a timely manner.

The IA presents two options as available for consideration, but the options are restricted in a way that creates an artificial discrete differentiation between Options 1 and 2. Option 1 is aligned with problems, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct 'all or nothing' options lacks nuance and does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ's resourcing, strategic direction and prioritisation.

Options 1 and 2 cannot be considered as two independent options. Instead, there is considerable overlap between them as many of the problems highlighted under the status quo could be addressed without making significant legislative and operational reforms. Where this is the case, we ask that these elements are considered available under Option 1, and that the modelling and cost-benefit analysis reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". The Act should include responsibility for food systems security and their vulnerability to climate change (as well as other food shocks, such as experienced with COVID-19) via impact analysis. This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is reflected in feedback outlined in Section 7 of the Impact Analysis. The food regulatory system has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety and security.

FSANZ, via the Act, is already equipped to undertake this work, having an established credible international reputation for food standards and safety, and its objectives regarding public health. FSANZ also has established relationships throughout the food system, including with experts, academics, civil society and other government agencies and departments. Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs food security requires.

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

The sub-problems that are already having the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings these are:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health when developing food regulatory measures;
- Policy Problem 2, sub-problem 2: Resourcing constraints have effectively preferenced piecemeal changes to food standards over holistic reviews;
- Policy Problem 3, sub-problem 2: Long-term decreases in funding have created significant resourcing pressure and are forcing FSANZ to focus on only a subset of its statutory functions.

We strongly disagree that the highest impact rating should be allocated to sub-problems that:

- impact on a very small number of businesses making applications to FSANZ (Policy Problem 2, sub-problem 1); or
 - food safety risks which are currently extremely well managed, suggesting less need for reform (Policy Problem 4, sub-problem 3),
- as is currently proposed in the IA, these sub-problems are not of the same magnitude as widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than sub-problems dealing with long-term health impacts.

Policy Problem 1 | The purpose and objectives of FSANZ are not clear

This problem should be considered high magnitude (3) as the impact and extent of the risks posed by sub-problems 1 and 2 outweigh any other problems identified in the IA.

Policy Problem 2 | Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are extremely limited as these are largely limited to operational issues for FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection as it relates to the quality and safety of food. There are no proposed reforms in the IA that will improve public health and consumer outcomes. We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations. This seems to be a reversal of logical processes - if FSANZ is going to consider its overall responsibilities and purpose then operational decisions will flow from this rather than the reverse.

Policy Problem 3 | Elements of FSANZ's operations are inefficient

This problem should be considered moderate-high magnitude (2-3) as the impact on the Australian and New Zealand populations is significantly greater than suggested for sub-problem 2. This problem should also include sub-problem 3 (resourcing constraints) under policy problem 2, which would further increase the magnitude of this problem.

Policy Problem 4 | Gaps and duplication of efforts challenge system agility

We support the rating of moderate magnitude (2) for this policy problem.

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Yes

Additional comments (optional):

Amendments to the Act must reflect the increasing understanding that the health of populations relies not just on 'safe' food supply but also on food systems that support lifelong health and well-being. Amending s3 and s18 of the Act to include a definition of public health and safety may address the minor issue that the Act itself should expressly include FSANZ's role in protecting against long-term risks to health, including diet-related disease, when developing food standards.

This change is important but it will not be enough to create positive action in this area unless it is accompanied by guidance to how this will occur. This need is illustrated already in the way the role in protecting long-term health has been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board, as noted in the IA. Simply adding a definition will not reduce confusion about *how* FSANZ is to consider long-term risks to health when developing food standards. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see our response to the question in relation to other initiatives under component 2.1 for more details).

We also recommend that any confusion can be prevented and addressed through effective communication from FSANZ about short-and long-term risks to stakeholders.

We support an amendment to s3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and the amendment of s18 to ensure it aligns with this definition.

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "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, AND THE DIET-RELATED RISK FACTORS FOR THEM, as well as acute food safety concerns."

Do you anticipate that this clarification could materially impact the way that FSANZ approaches applications and proposals and the factors to which they give regard?

No

Additional comments (optional):

No. The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." When discussing this cost, the IA says it may expand stakeholder expectations and put pressure on FSANZ to consider factors or take on roles outside its scope. We do not agree with this inclusion. We strongly disagree that confirming

FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Yes

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Ministerial Policy Guidelines go through processes which already assess them against industry considerations (like those listed in s18(2)(a)-(d)) when they are developed. There is no need for FSANZ to undertake this exercise again when it is making its own determinations.

We strongly suggest that s18(2) of the Act is amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and that the other items to which FSANZ must have regard, listed in s18(2)(a)-(d), are to be considered only once compliance with Ministerial Policy Guidelines is assured.

Compliance with Ministerial Policy Guidelines should be documented in a report and should clearly demonstrate how the Ministerial Policy Guidance has been complied with and the public health implications of compliance and non-compliance. This information should be publicly available on FSANZ's website.

We note that this would be in line with Best Practice Element 1 as outlined in the IA which states that "the objectives [of the regulator or standard setter] are clear and consistent, and factors considered by standard setters support such objectives". FSANZ objectives are very clear, as set out in s3 of the Act. The factors to be considered by FSANZ, however, do not currently support these objectives as Ministerial Policy Guidance is given the same weight as other considerations (those in s18(2)(a)-(d)).

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:

We are supportive of a greater recognition of Indigenous food expertise in the Act and defer to the expertise of Indigenous-led organisations. First Nations and Māori people must be adequately consulted and involved in the changes in the Act provision and language changes, as it relates to their culture and health. We recognise the importance of cultural determinants of health for First Nations and Māori peoples, including the prioritisation of their knowledge and culture led approaches to health and wellbeing.

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:

FSANZ must consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Clarification of the definition of public health as contemplated in the IA will not in and of itself ensure that the significant gap between the objectives of the Act, and the practical implementation of it in food standards is addressed.

The introduction of a definition must be accompanied by further guidance on how it should be implemented within the remit of food standards to ensure

that the consideration of long-term public health outcomes cascades throughout FSANZ operations.

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

We strongly support the Public Health Test as proposed by The George Institute for Global Health in their submission, as set out below.

The PUBLIC HEALTH TEST

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.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

The information given is too limited to support such an approach so "no" is the appropriate response here. There are both risks and opportunities to the introduction of a risk-based framework, however the IA does not explain exactly how it will be applied, who will make decisions and what appeals mechanisms there will be. The lack of detail means we are unable to support such an approach at this time.

We strongly support a separate consultation about the introduction of a risk-based framework to ensure the concerns for public health are addressed.

Specifically, we want further consultation on:

- The risk criteria and assessment matrix
- The organisations whose assessments would be used as basis for minimal assessment approach
- What outcomes would be expected for public health from such an approach

This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Prefer not to respond / I don't know

Free text box, no character limit:

The information given is too limited to answer this question.

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:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.

- Food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

- Public health considerations should also be able to be accepted through this mechanism. The apparent bias towards industry decisions being classified as 'low risk' and public health decisions being classified as 'high risk' means that public health decisions would likely fall out of this pathway. There may be examples where evidence from international jurisdictions lead to better public health outcomes- for example improvements to front-of-pack nutrition labelling that have been demonstrated to more appropriately consider health risks, better influence consumers, and improve governance. However there appears to be no intention to accept risk assessment from international jurisdictions on broad public health measures.

- The IA states that the determinations of 'overseas bodies' could be adopted, we support this for public health measures and suggest non-conflicted bodies like the World Health Organization are included.

There are many examples where the WHO provides excellent global guidance on the production and marketing of infant formula which could be adopted for use in Australia and New Zealand. However, prevailing attitudes to global health recommendations, which are perceived as being for low or low to middle income countries only, should be considered as a barrier to this.

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:

If a program of harmonisation with international standards proceeds, standards should be harmonised 'up' to international standards that represent the best outcomes for public health and consumers, rather than 'down' to standards that enable unhealthy foods to proliferate further in the marketplace. For this reason, food standards should only be harmonised with international standards where those standards meet the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). The approach proposed in the IA risks further prioritising commercial decisions at the expense of public health. The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards.

The types of standards automatically recognised should not be those that progress highly processed foods harmful to long-term public health onto the market.

Question remain, including how this would work in practice? What does 'enabling FSANZ to automatically recognise' mean? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details).

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

No

Free text box, no character limit:

From the information provided, there appears to be no intention for the minimal check pathway to apply to proposals - only for applications. This risks further prioritising of commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application, undermining the primary objective of the Act to protect public health.

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

No

Free text box, no character limit:

New pathways would remove public consultation and threaten transparency. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

There is no evidence from the IA that any new pathways would apply to broader public health measures.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore fall out of potential new pathways to amend food standards. This risks further prioritising commercial decisions at the expense of public health. We note also that there are no mechanisms in the proposed reforms to ensure that any efficiencies delivered result in more resources being directed towards processing public health proposals.

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions

made 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?

No

Free text box, no character limit:

There are opportunities to improve public health, if consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated with the use of a Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details). As noted in our response on other initiatives that should be considered under component 2.2, we also suggest there are statutory timeframes for proposals to ensure they are processed in a timely manner.

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:

There is not enough information about risk based framework to answer this. This seems like an internal operational question - there are many ways to be more flexible and efficient. The more important question for us is to what end that efficiency and flexibility is directed - the Public Health Test could provide guidance for that.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

We understand that the risk framework proposed under component 2.2.1 would also be used to determine which decisions could be delegated. As noted in our response on the risk framework, the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be applied to assess risk. This is particularly important when determining the level of risk for decision-making arrangements. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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:

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details), then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

No

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system.

We note that without meaningful consultation there is a real risk of the 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?

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly.

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Yes

Free text box, no character limit:

We suggest the Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) is used to determine which reviews are undertaken and how they are prioritised.

Additional resourcing does not require the adoption of Option 2 and is equally available under the existing Act and operations framework (Option 1). We recommend all components that propose additional funding that does not require significant legislative change be assessed separately, please see our response to the question on methodology.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

There should be clear criteria outlined for how and when standard reviews will be undertaken. It should be clearly stipulated that both vertical standards (e.g. energy drinks) and horizontal standards (e.g. sugar labelling (i.e. that it flows throughout the Food Standards Code and affects all relevant products)) can be reviewed and reviews should be undertaken to support FSANZ primary objectives as set out in s3 of the Act.

Timelines for standard reviews should be implemented. We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but there is no mechanism to ensure this and no framework to govern how this would work in practice. There is also no justification for how FSANZ will be able to do this from a time and resource perspective.

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

No

Free text box, no character limit:

FSANZ can already develop guidelines and Codes of Practice - no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice. Guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application.

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Negative

Free text box, no character limit:

Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and to risk public safety, health and confidence in the food system and we do not support this.

For example, the MAIF Agreement which is independently administered by the infant formula industry and assesses reports of marketing breaches for companies who are voluntary signatories to the Agreement.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Yes

Free text box, no character limit:

Timeframes for proposals.

We strongly recommend that statutory timeframes for proposals are introduced into the Act.

We recommend a timeframe of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Yes

Free text box, no character limit:

We support the addition of people with a range of skills to the FSANZ Board with the goal of supporting good governance and oversight of the Act as per the recommendations of the 2014 review, noting that the requirements for expertise (as currently set out in the Act) must be retained.

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

No

Free text box, no character limit:

We do not support changing the current nomination process to an open market one. As stated, we strongly oppose any decision that may reduce the number of public health positions on the board. Not only would an open market process risk reducing public health positions on the board, but an open market process might also reduce the quality of public health nominees. That is, particularly given that there are no details as to what such a process would look like, there is a real risk that former industry representatives with health backgrounds may qualify. By keeping the nomination abilities among public health organisations, this issue can easily be avoided. This helps ensure management of real/perceived conflicts of interest.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Positive

Free text box, no character limit:

Expedited applications pose a real risk of regulatory capture and a pathway for larger industry actors to have their applications processed ahead of the queue, particularly smaller businesses. Removing expedited pathways would ensure there is equity for all those making applications.

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:

We are concerned about the threat to access and equity for non profit advocacy organisations and for small food start-ups if this was implemented.

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:

Levy is not supported.

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:

Levy is not supported

What would be the expected impact of compulsory fees for all applications?

Negative

Free text box, no character limit:

Compulsory fees are also not as financially sound as an industry wide levy for resourcing FSANZ.

We do not think there should be any option to expedite applications under any fee structure – this benefits large corporations and puts small businesses and NFPs at a distinct disadvantage.

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:

We do not support cost recovery from industry initiated entrepreneurial activities. This opens FSANZ up to being compromised in its function as an independent body. We note that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters and we support that this is appropriate to ensure FSANZ is independent. Furthermore, it is also not 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?

No

Free text box, no character limit:

This is a reactive and punitive option that is unlikely to prevent these events in the future.

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:

Do not support a levy.

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?

No

Free text box, no character limit:

FSANZ should be funded appropriately to fulfil its roles.

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:

Do not support a recall levy or annual levy.

Would it be better to charge a levy per recall, or an annual levy?

Other

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?

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

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?

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is 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:

The Public Health Test (see our response to the question in relation to other initiatives under component 2.1 for more details) should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

As noted, priority setting between FSANZ and FMM is already a standing agenda item. Provided FSANZ are doing regular standard reviews as core work and progressing proposals efficiently, and are resourced to perform these essential tasks, this should be sufficient.

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Yes

Free text box, no character limit:

FSANZ already meets regularly 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 needs to be better resourced to ensure it can undertake its core functions, including regular standard reviews and efficient processing of proposals. This would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Food Standards Code is up to date and reflects changes in the market as it would already have been done.

It would also prevent the need for strategies that threaten issues of access and equity for those seeking the services of FSANZ - such as levies.

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:

We support this and strongly encourage that this database be publicly available. We note data linkage and sharing with Australian Bureau of Statistics and Australian Institute of Health and Welfare should be ensured.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact of nutrition on public health outcomes. Data can help in identifying priorities, the development of policy options and the evaluation of implementation. Importantly, consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed. It is essential to driving better health outcomes for Australians and New Zealanders.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand. In New Zealand, a food consumption survey should be included as part of the regular Health survey conducted by the Ministry of Health.

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 broader burden of disease.
- Marketing on labels of special use foods such as infant formula and complementary foods

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Prefer not to respond / I don't know

Free text box, no character limit:

Would prefer to have a better definition of "international partners", but collaboration would be a good strategy for developing the Australian system.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Prefer not to respond / I don't know

Free text box, no character limit:

There is some benefit in FSANZ being able to provide additional interpretive guidance to industry.

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Yes

Free text box, no character limit:

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines.

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Yes

Free text box, no character limit:

Yes, we support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if it leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Yes

Free text box, no character limit:

The IA presents two options as available for consideration – Option 1 being to ‘retain the status quo’ with no changes to the Act or to FSANZ’s operations, and Option 2 being to ‘modernise regulatory settings’ by adopting the entire package of reforms. Presenting the options as polarised in this way creates an artificial distinction between Options 1 and 2. Problems are characterised as features of Option 1, with Option 2 framed as a package of solutions, even though many of the identified problems could be addressed without changing the Act or operational framework. Presenting the reforms as two distinct ‘all or nothing’ options does not accurately reflect the changes that genuinely require significant legislative and operational reform, and those that require changes to FSANZ’s resourcing, strategic direction and prioritisation. The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is acknowledged that not all components of Option 2 may ultimately proceed, and some benefits could apply equally under Option 1. Our responses on the Cost Benefit Analysis reflect this, noting that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1.

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by ‘public health benefits’, is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers/governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

We do not have expertise in this area. We strongly recommend consultation with peak bodies for First Nations and Māori peoples.

What are the current delay costs to industry?

Free text box, no character limit:

We note, that we do not consider it reasonable for delayed profits to a for profit industry to be considered at the equivalent level to real health system costs borne by governments and consumers.

The Cost Benefit Analysis notes that there are delay costs to industry due to the inefficient processing of both applications and proposals.

In relation to proposals: we are not aware of any delay costs to industry as a result of the timing of proposals and the IA does not note any. Any delay costs as a result of proposal timing should be clearly set out, detailed and quantified.

In relation to applications: more specificity and detail about delay costs should be provided. Are the industry costs presented in the Cost Benefit Analysis lost potential costs or lost real costs? i.e. lost potential revenue from a not yet developed product or lost revenue from a developed and ready for market product which is unable to be transferred to market and sold?

In respect of the amount specified as the delay costs to industry these are based on costs provided by the processed food industry, this is not independent or verifiable and we recommend that independent economic data is used that is applied to real world figures. We note the requirement in the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent and that any gaps or limitations in the data are discussed and that assumptions are disclosed. We do not consider that the delay costs noted in the Cost Benefit Analysis currently meet that requirement.

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?

Prefer not to respond / I don't know

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:

The costs and benefits to consumers and governments need to be more specific and detailed and the assumptions clearly articulated. We strongly suggest that the Cost Benefit Analysis include:

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.
- The Cost Benefit Analysis should clearly state what is meant by 'public health benefits', is this a decrease in non-communicable disease rates, reduced body mass index, based on dietary patterns (a mixture of these things)? Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (safety) and long-term (chronic disease) benefits should be separately noted for each element of the Cost Benefit Analysis, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.
- The Cost Benefit Analysis should clearly articulate how a 'risk-based' approach improves public health. This approach is less rigorous than the current approach, is the benefit because it allows extra time for FSANZ to do proposals (when no additional proposals are anticipated to be completed each year)? Where is the quantification of the cost of FSANZ being less rigorous in the Cost Benefit Analysis?

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:

Data and expertise are available across 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. We recommend a significant effort be dedicated 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:

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits - we do not agree that this conclusion can be drawn from the data or proposed reforms presented. The Cost Benefit Analysis states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the Cost Benefit Analysis and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system - this needs to be modelled under Option 1 and Option 2.

In relation to the analysis on proposals / applications / standard reviews specifically:

Proposals

- The proxy used to quantify public health impact is not appropriate for proposals as a whole.
- The Option 2 discussion notes that FSANZ will be able to process proposals in a 'more timely manner' - this needs to be quantified - as noted in our responses above, we recommend that there is a time limit set for completion of proposals (3 years), this should be used as that measure for proposals and then reflected in the Cost Benefit Analysis.
- Delay in processing proposals has not been accounted for under Option 2 and should be.

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

- A unit cost/benefit for consumers for standard reviews specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.
- There is no rationale stipulated for the assumption that each standard review results in a public health benefit.

Industry costs

- We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

No

Free text box, no character limit:

- Bundling components for reform into themes does not enable accurate assessment of the risks with each component. We strongly recommend that each component is assessed separately. This is particularly important as not all components will necessarily be implemented, it is imperative that the risks of each component are clear so that the combined impact of components that are taken forward can be accurately assessed.
- Confusion around the public health objective and poor management of risk related to long-term health should be considered as separate risks and not bundled together.
- Both the risk-framework and new pathways have potential to impact short-term health outcomes (food safety) and long-term health outcomes, this must be specified and the risk for each assessed separately.
- Without a requirement to dedicate resources to proposals (e.g. through legislated timeframes) there is no guarantee that FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.

- Without a requirement to dedicate resources to standard reviews (e.g. through legislated timeframes) there is no guarantee FSANZ resources will be used to progress these, this has not been factored in as a risk itself, nor into the assessment of related risks.
- Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

No

Free text box, no character limit:

The IA summarises that Option 1 was deemed on average much riskier than Option 2. We suggest that this is reassessed according to our recommendations below:

The IA in section 8.2.2 states that the consequences of the risks of unsafe food or introducing higher risk to population health (i.e. unhealthy food) is major and gives each of these a consequence rating of 1 (major). We strongly support this rating and note that we do not consider any other risks identified as consequential as these and such, no other consequences should receive a rating of 1 (major) as they are not on the same scale of harm.

The risks and impacts of businesses not entering the market or bringing products to market should not be overstated.

We note that many of the risks noted under Option 1 can be addressed under the status quo, and Option 2 doesn't necessarily resolve those risks - there needs to be equal treatment of this ability when assessing risks under each option.

Theme: purpose and objectives

Option 1

- Identified risk: Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety – particularly long-term health – are not well managed.

Consequences of "confusion" should be rated as minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. Likelihood for stakeholder confusion only remains high if FSANZ does not communicate effectively, which could be rectified under Option 1. Nothing proposed under Option 2 will better support FSANZ's ability to consider risks to long-term health, in fact many of the proposed reforms will remove oversight and actually work to heighten risk. As such the likelihood is negligible (3).

Option 2

- Identified risk: Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks.

Consequences and likelihood of "clarification" are both minimal (3), given it is acknowledged that FSANZ "should already" and is "already empowered" to consider long-term health impacts. We strongly disagree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a risk. The hypothesised impacts noted are extremely speculative and not supported by evidence.

- Identified risk: Improving visibility of First Nations and Māori culture and expertise could draw attention to the lack of focus on other population groups.

We agree that the consequences of this risk are minimal and the likelihood not high, however it is entirely inappropriate to suggest that appropriate, if nominal, recognition of First Nations and Māori culture and expertise would exclude the broader population, particularly when almost all indicators relevant to the food regulatory system are worse amongst First Nations and Māori people.

Theme: reformed standard-setting

Option 2

- Identified risk: Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market.

We agree that any potential harm from this risk is massive and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely-unlikely (2.5). The likelihood of risk due to less oversight and scrutiny under the proposed risk-framework is necessarily heightened. Routine assessments of the effectiveness of the risk framework are not proposed in the reforms, and will not necessarily be effective in mitigating the risk posed by this reform, as acknowledged in the IA itself. As such the likelihood rating should be high (1).

- 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.

We agree that any potential harm from this risk is large and support the rating of major (1) for this risk. We strongly disagree however that the likelihood of this is moderately likely (2). The likelihood of risk due to less oversight and scrutiny under the proposed new pathways is necessarily heightened. The IA does not provide any information on how comparable standard-setting bodies would be 'carefully selected' and as such we do not agree that this risk can be managed well based on information provided. As such the likelihood rating should be high (1).

- 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.

We strongly disagree that the consequence of this is only moderate-minimum (2.5), this has the potential to undermine public confidence in the food regulatory system. This should be considered a risk of major consequence (1). We support a likelihood rating of 2.

- Identified risk: Increased use of Codes of Practice and guidelines could create enforcement obligations for jurisdictions to which Ministers have not agreed,

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

- 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.

We strongly disagree that the consequence of this risk is major (1) and that the likelihood of its occurrence is very likely (1) given applications only use a minor portion of FSANZ resources. As such, reallocation of those resources is unlikely to meaningfully affect progress on other work, especially when no mechanisms require focus on other work. This risk is not addressed in Option 2. The consequence and likelihood are both minimal (3).

Option 2

- Identified risk: Application of a levy on select industry participants could contribute to financial stress in a sector that is already feeling overwhelmed.

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is unlikely (3).

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Prefer not to respond / I don't know

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Resourcing of FSANZ

The IA is clear that FSANZ is insufficiently resourced and that it must be adequately resourced to deliver on its current legislated responsibilities, in addition to any new functions proposed in the reform options.

Inclusion of sustainability in the act

To achieve FSANZ purpose of long-term health outcomes for Australians and New Zealanders, the Act must ensure a food regulatory system that is healthy, sustainable and secure. There is a clear and urgent need to reorient the food regulatory system to safeguard food security for all people living in Australia and New Zealand. The Review of the Act provides an opportune moment to address the gap in legislative and regulatory frameworks that safeguard food security, and to respond to the climate change policy landscape in Australia and New Zealand which have made international commitments to food security (see UAE declaration on sustainable agriculture, resilient food systems, and climate action COP28 Declaration on Food and Agriculture).

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures.

Public health support for this approach was provided throughout earlier stages of the Review. Since this time, Australia's policy landscape has changed, with clear commitment from the Commonwealth Government to address food security in the face of climate change. The release of the National Health and Climate Strategy (see: National Health and Climate Strategy | Australian Government Department of Health and Aged Care) clearly demonstrates this with Actions that address food security (Ref Actions 3.1, 3.3, 3.5, 3.6, 3.7, 3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability. New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

Currently there is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science, health and nutrition science in the pursuit of an evidence base to underpin food system policy in Australia and New Zealand. There is a great need for this to occur, and

quickly. Food policy involves several government departments and agencies, each with a different perspective on the issue. These bodies must work collaboratively to implement the significant changes needed to move toward a sustainable food system required to support the health of Australia and New Zealand.

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

We note that the IA does not accurately or adequately represent public health and consumer organisations' feedback from previous consultations in the 'Summary of stakeholder feedback' section. More significantly, this feedback has not been reflected in the policy problems and solutions proposed in the IA.

Public health and consumer stakeholders were clear in their feedback in previous consultations that the reform options (then presented under options 2 and 3 of the Draft Regulatory Impact Statement) would not enable, and would in fact further undermine, FSANZ's ability to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices. At that time public health and consumer submissions noted:

- that whilst the status quo is a negative outcome it is better than options 2 and 3 (16/19 (84%) public health organisations and 3/3 (100%) consumer organisations)
- the policy problem of the FSANZ Act not meeting its primary goal of public health, specifically in relation to long-term health and preventable diet related disease (in addition to other policy problems) was missing from the analysis (18/19 (95%) public health organisations and 1/3 (33%) of consumer organisations).

The public health community's perspectives on FSANZ operations, their FSANZ role in the food supply and the FSANZ Act Review have, since the first public consultation in 2020, been consistently communicated but are not reflected in the IA.

We disagree with the statement made in section 7.1 of the IA, that "the IA has evolved significantly. Characterisation of the problems to solve, and the options to solve these has changed dramatically since the RIS was published for consultation in 2021" and suggest that the fundamental approaches, principles, proposals and intended outcomes remain largely the same. We remain concerned that the combined impact of the reforms proposed under Option 2 will negatively impact the health and wellbeing of Australians and New Zealanders.

The IA represents a further development of some of the reforms previously proposed under options 2 and 3 of the Draft Regulatory Impact Statement with no additional reforms to protect and promote public health and consumer interests. Our submission proposes measures that will safeguard public health and consumer interests, and we strongly recommend that these are reflected in the next steps for reform.

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 22:09:49

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Bob Phelps

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::
GeneEthics Limited

Which sector do you represent?

Other (please specify)

Other: :
Public interest advocacy

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::
[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 document is like a rudderless juggernaut. For the methodology and other aspects of the proposal to work efficiently and meet the needs of all sections of the Australian community, they must derive from a set of overarching principles, goals and objectives. These will help guide and optimise the system, its functions and outcomes. The first line of the Impact Analysis's Executive Summary correctly asserts that "Access to adequate food is a basic human right" but Australia's food system has failed miserably to deliver on this right, which is substantially the result of failed regulation. The principle is not even mentioned again in the Analysis and nothing in the Act review is proposed to achieve it. Our comments on the Act Review in 2021 also advocated a principle and values driven approach to a food system that serves the public interest but we appear to have been ignored.

To ensure that the new Act and Australia's food regulatory, production, and distribution systems deliver, over-arching and interdependent principles are established to ensure food security for all, as a right. For instance, key principles that ought to inform the system's methodology and other functions must include:

< The Precautionary Principle that enables and requires decision-makers to adopt precautionary measures when scientific evidence about a human health or environmental hazard is uncertain or incomplete;

- < The Transparency Principle that the EU adopted, to inform, engage, and empower communities to maintain and improve their own long and short term well-being, health and safety;
- < Independent and robust scientific evidence to inform the methodology, not so-called regulatory science which lacks independent evidence, rigour and accountability;
- < Acceptance that some foods and food-like substances pose inherent hazards and harm. For instance, ultra-processed junk food (including infant formula) are addictive so must be regulated like alcohol, tobacco/vaping, and gambling;
- < Prioritising the long-term well-being and health of the whole population would add to national happiness and help to minimise the costly impacts on the health system, not only as a result of obesity;
- < Novel foods, food technologies, and processes that have no long history of trouble-free use must be regulated with extra precaution and only be approved on the basis of strong independent evidence;
- < The synergistic and long term impacts of synthetic chemical residues in the food supply must be central to assessments, to prioritise public health ahead of the the convenience or efficiency of food producers and processors.
- < FSANZ should have the primary role in MRL setting, not the APVMA.

Clarity of purpose is essential to successfully renovating the Act.

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

We agree that there are many opportunities for improvement in the systems, particularly their openness, responsiveness, flexibility, and efficacy. What are the optimum functions and responsibilities of FSANZ, the Food Ministers Forum, and the Standing Committee? Their proceeding must be much more open and transparent so that the community can fully and frankly engage with food matters. The Ministerial Communiques are an example of the closed and constrained reporting from the whole system as they are uninformative, not frankly disclosing what Ministers considered and their arrival at decisions.

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:

Indigenous food security, access, and health are vastly under-rated.

The Act is also silent on ensuring that everyone is well-fed and nourished, especially those families chronically dependent on food charities. Their right to food is ignored.

The collective impacts of food processing aids, additives, colourings, flavours, preservatives, etc. used in ultra processed foods must not be assumed to be low risk.

Ultra-processed foods should be identified as a high-rating addiction problem. A Time article asserts: "At their core, ultra-processed foods are industrial concoctions with ingredients that make them harmful, including a host of synthetic additives: salt, sugar and oils combined with artificial flavours, colours, sweeteners, stabilizers and preservatives." The BMJ confirms that UPF junk foods are designed to be addictive. So the only valid regulatory models for allowing them to be marketed are those applied to gambling, tobacco, vaping, and alcohol products. e.g. a warnings and more info on gambling TV ads.

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):

The definitions must also include a responsibility to improve national population well-being and prevent non-communicable disease arising from the food supply.

The regulatory status quo is a miserable failure and does not serve public good.

Change is essential but it must be derived from core principles. To say "Principles could be embedded in legislation to allow FSANZ to create other pathways to amend food standards" goes nowhere far enough to reinvigorate and re-envision the whole system, that a set of core principles could guide. Likewise, the observation that "the Act could be amended to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health elements" is not broad enough in its scope to empower the whole system to help promote, as well as protect in a token fashion, the well-being of the whole nation.

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?

Yes

Additional comments (optional):

Principles, vision, mission and goals, informed by clear definitions and a commitment to independent action in the public interest, must inform amendments to the Act.

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Positive

Additional comments (optional):

But only if it is related to first principles and serves the public's long term well-being.

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:

The whole system needs to be much more open and transparent to all interested people if it wants to effectively and honestly communicate food policy, regulatory processes, and opportunities for genuine participation.

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:

Ask them through participatory processes. Mount a separate and independent process to ensure that indigenous and multicultural communities are full participants in deciding the shape and scope of their engagement with the food system so that their food security needs are fully met.

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:

Ask them to participate in community-led and open processes. Create ongoing relationships that promote the communities' interests, preferences, and needs!!

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Yes

Free text box, no character limit:

Convene open online forums that are not FSANZ centred, to explore all the issues from community perspectives. Include food professionals with expertise from all walks of life.

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

No

Free text box, no character limit:

These sections propose more industry self-regulation and fast tracking through the system.

They are not in the public interest so fuller and more diverse community participation is needed.

Risk is a narrow concept that constrains the inclusion of broader and more robust evidence.

"Use of hazard-based approaches for foods also means that comparisons with benefits for nutrition and food security cannot be undertaken. This has the potential to lead to bias in the overall conclusions of regulators and risk managers, who may not have been presented with the benefits of particular foods."

<https://ilsa.eu/publication/the-role-of-hazard-and-risk-based-approaches-in-ensuring-food-safety/#:~:text=Use%20of%20hazard%2Dbased%20approaches,the%20>

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

The scientific method instead of regulatory science.

Independent evidence - preferably peer-reviewed and published.

The benefits as well as the hazards and risks of food approvals should be assessed.

Do not allow corporate data or research results to dominate as industry studies are always biased.

Australian evidence preferred over the decisions of overseas regulators or the Codex.

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Negative

Free text box, no character limit:

Perceptions of risk depend on the observer's point of view, vision and commercial interests.

FSANZ has a relatively narrow and short-term brief that must be extended to include a broader concept of public health and also well-being.

A risk-based framework will contract, not expand, the food systems scope to be genuinely effective and to serve the public rather than private interests.

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:

Like the various political and partisan influences on FSANZ, international jurisdictions are also compromised in various ways that cannot be assessed from afar. Independence and objectivity must be keynote modes of action for our food regulators.

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:

So-called efficiency and effectiveness - narrowly defined - must not be primary goals for the system.

Automatic recognition of anything breeds systemic complacency and carelessness.

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:

Secrecy and obfuscation are key deficiencies in the present regulatory system.

For example: Approval of Vow's cultured fake meat (A1269) is an example of FSANZ fast-tracking novel food production, distribution and consumption.

Their consultation documents adopted the views of the applicant and flagged their intention to approve it before public comments were even submitted. Independent expert and public assessment was impossible as most information was withheld as Commercial in Confidence.

Yet, for instance, even the safety of the growth factors used as promoters in the production process was not clearly established and evidence provided.

Such promoters may not trigger cancers but it is well-established that they can facilitate cell proliferation.

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:

It is unsatisfactory that FSANZ already has the power to initiate and process its own applications for change without prior notice. The regulator becomes an applicant and advocate for its own interests and preferred actions. Principles are needed but not these. They would be designed to fast track proposals through the regulatory systems with minimal reference to the interested public or independent experts.

What would be the impact of introducing new pathways to amend food standards for you?

Negative

Free text box, no character limit:

The public interest would not be served.

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Yes

Free text box, no character limit:

Regular, independent, public forums for open discussion among all interested parties may help to democratise food processes and policy development. FSANZ must not be risk averse to the sort of pressure received when a forum with an animal rights activist included was cancelled. No topic should be off the food regulatory system's agenda.

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:

The outsourcing and privatisation of FSANZ and other food regulatory functions is unacceptable. The scope for undue influence, fraud, and misinformation are unnecessarily increased.

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

Short and long term public health and well-being, not only obesity and non-communicable disease. Hunger and malnutrition have multiple health and well-being impacts, especially for the most vulnerable people in our community. All impose imposts on the health and other systems so precaution is essential. Preferred access and influence for the globalised food industry must be minimised. The revolving door between regulatory and official personnel and industry must be monitored and minimised with strong prohibitions.

What would be the impact of streamlining decision-making arrangements for you?

Negative

Free text box, no character limit:

Streamlining decisions inherently promotes complacency and compromise.

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Not acceptable!! Expertise is not the only relevant criterion. Conflicts of interest and other measures would also need to be included. It is a minefield that must not be entered.

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?

Yes

Free text box, no character limit:

Why not also apply nutritional and compositional assessments to Ultra-Processed Foods and other foods?

If this were merely a technocratic measurement exercise it may add to the exclusion of other worthwhile traditional foods or ingredients that may still make a useful contribution to overall diets.

Full community participation would be the only legitimate basis for such an exercise.

Authentic case studies and cultural reports, from those people who have a long history of employing these food practices, would be the only legitimate basis of any such publications.

Who would be the audience for such information and what would be its real intended function? Is it aiming to inform, change cultural behaviours, discredit some foods and practices?

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?

Yes

Free text box, no character limit:

Why would you question long histories of apparently safe and beneficial use? What is the hidden agenda? Who stands to gain from such analyses?

If the relevant communities are the authors of such guides they may be of use but that is for them to decide.

What would food regulators seek to gain?

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:

Improved honesty, candour, openness and transparency would again be essential for success.

Applicants, not regulators, must have the tasks of data gathering, advocating, and framing proposals, instead of FSANZ and other filling the advocacy role for proposals as they do now.

Loss of public trust and confidence in food regulation is the high cost of the present system which makes FSANZ into an advocate for the proposals it approves.

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Yes

Free text box, no character limit:

Yes, a set of agreed principles, missions, visions, and goals enshrined in the legislation.

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:

Codes of Practice and guidelines are, like outsourcing assessments, a strong invitation to bending the rules and taking advantage of the food regulatory system.

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! Applied to food regulation, Codes of Practice or guidelines would be another regulatory disaster.

The TGA and AHPRA use codes and practice and guidelines that repeatedly fail.

The 4 Corners show on pain surgery and other interventions is one good example of gross failures of monitoring and enforcement into which the Minister has belatedly initiated an inquiry.

The IVF and pharmaceutical industries, for instance, are also enabled to rip off the public health system because of unenforced codes and guidelines.

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:

Reject them all!!

A Code of Practice or guideline would be an invitation to malpractice and non-compliance, while a risk framework would be too narrow to ensure the nation's well-being, health and safety.

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:

An absolute fiasco that would eventually have to revert to sound regulation, after a lot of harm had been done. The transnational food industry simply can't be trusted to police itself and its addictive products.

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

No

Free text box, no character limit:

We reject the concepts.

They can never be fixed with cosmetic modifications.

The present regulatory regime would be further weakened if even more power were invested in others, especially those with vested interests to serve.

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

No

Free text box, no character limit:

The Board and its activities, like those of the Forum and Standing Committee, are shrouded in secrecy.

Merely amending the Board's composition of expertise is not the profound change that is required to make the system responsive to real community needs and aspirations for the food supply.

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:

More openness may be a breath of fresh air.

But it also begs the profound systemic, system-wide, reforms required for the public interest to be served.

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Prefer not to respond / I don't know

Free text box, no character limit:

Unsure about this.

The cashed up global UPF industries have the resources to pay for the fast track while smaller businesses or startups may be less well resourced to pay for an expedited process. Scale the fees to the size of the enterprise.

FSANZ regulation should be largely taxpayer funded but we must get good value for the money spent and ensure it is in the public interest.

Maybe move more of the assessment preparation onto proponents as part of their application.

This would help to make FSANZ less obviously an advocate for the approval of processes as it now is.

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:

Cost recovery always compromises regulatory processes and decisions.
This is obvious, for example, with the APVMA as the Clayton Utz report confirms.

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:

APVMA's cost recovery is based on the value of each chemical sold.
If you insist on cost recovery for FSANZ, annual accounts should assist.

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:

0% - 100%

What would be the expected impact of compulsory fees for all applications?

Prefer not to respond / I don't know

Free text box, no character limit:

Previous comments relate.

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Yes

Free text box, no character limit:

A tax on all Ultra-Processed Food-like substances should be considered.
However, ensuring the affordability and availability of healthy nutritious foods for everyone is key.

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?

No

Free text box, no character limit:

Most recalls are now voluntarily initiated by those in breach.
A levy may discourage prompt action to resolve problems requiring a recall.
This would not be in the public interest as more harm may be done through delay or non-reporting.

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:

Depends on the volume of product required to be recalled.

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:

Unsure. Are the states and territories requesting FSANZ work they should do?
Maybe the Food Forum should also have a budget to be dispensed as required?

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Positive

Free text box, no character limit:

Set on the basis of local, regional, state or national recall?

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?

Per recall

Free text box, no character limit:

An annual levy would only work in retrospect.
Predicting the volume and scope of recalls in advance would be entirely speculative.
A slush fund or an empty pocket may be created.

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Prefer not to respond / I don't know

Free text box, no character limit:

They might think twice about doing essential work.
Is it work they can and should do themselves and share with other jurisdictions?

How would this need to be implemented to be successful?

Free text box, no character limit:

??

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Prefer not to respond / I don't know

Free text box, no character limit:

The NZ guidelines on who should pay for what (Pp 59/60) appear fair and reasonable.
Industry can and should pay its share provided that no levers of power and influence are created, in contravention of the public interest.

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:

Such agenda setting is essential.
However, like the rest of the system it should be open to public scrutiny and participation.
It is not in the public interest that so much of the food system is opaque and is denied the fresh air of democratic processes.

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

We agree that "The lack of a shared vision of system priorities between FSANZ and the FMM limits the effectiveness of the broader food regulatory system."
This may in part be resolved with observation and implementation of the clear principles, vision, etc. that our recommendations would provide.

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Shared principles should inform more co-operative and co-ordinated approaches to action.
Co-ordinating FSANZ with nine jurisdictions, each with its own bureaucratic and political priorities, requires independent facilitators and co-ordinators to

smooth the way.

Include canvassing public and expert opinion on priorities and procedures as part of an open process.

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:

Managing risks, especially unforeseen ones, should follow minimisation.

Like citizen science, the enthusiasm and expertise of the interested public should be engaged.

Horizon scanning and other foresight processes, especially with novel foods, may be useful.

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Maybe the FSANZ Board should include reps from each of these?

Social media and AI might assist.

Effective collaborations emerge from consensus about shared concepts and purposes.

Thus, developing and then working from first principles will be essential.

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:

Better to have academics or other specialists do this.

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

??????

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Yes

Free text box, no character limit:

Sharing information is always a plus but it must be with bigger goals than just managing risk.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

A commitment is needed to build strategies that enable population health to improve.

Sharing information and evidence that encourages well-being and health population-wide is needed.

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:

This should embody the principles and other core values that we propose.
Then interpretation of food standards may be clearer and their enforcement clearly signalled to industry participants.
The broader community would also be clearer on the terms of engagement for seeking actions in the public interest.

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:

First principles and other values statements enunciated our early answers.

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:

Other constituents, such as the interested public and independent experts also require such guidance.
Making them only for industry would be a lost opportunity and disservice to the community that FSANZ purports to serve.

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?

No

Free text box, no character limit:

The consultations envisaged are inadequate as they must be more than guidelines.
They must be initiated from within indigenous communities where cultural knowledge and practice exist.
If directed externally and bureaucratically such engagements will fail.
First Nations people and also migrant communities must be enabled to start and direct processes in which their communities can fully participate.

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:

Definitely, but surely they already do so?
Monitoring and enforcement are essential, especially e.g. for labelling of irradiated and GM fruits and vegetables which appear to be absent.

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Yes

Free text box, no character limit:

The public interest and the interested public again appear to be ignored.
Make them the standard bearers for improved performance.
You are all 'public servants' after all.
Trust and confidence in the food system will only be deserved and won when the system is more transparent and respects the public interest, to empower the interested community to be genuine participants in important aspects of food regulation.

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:

We don't want to be classified as passive, disempowered, and victimised, 'consumers'.

Consumerism is the source of many problems the system purports to manage or solve on our behalf.

Citizens empowered to act on behalf of themselves and the public interest will be great allies for the food regulatory system, but only if they are brought into it on democratic terms.

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

They will accomplish great results if nurtured and empowered.

Pressuring people for quick and non-enduring results will produce failures.

What are the current delay costs to industry?

Free text box, no character limit:

??????

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

No

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Yes

Free text box, no character limit:

This narrative appears most relevant to processed foods and will mostly benefit Ultra-Processed Food corporations that care nothing for public well-being and health as they peddle their addictive wares.

The benefits and costs of a healthy diet of whole foods, conforming with Food Pyramid recommendations, also require discussion and assessment in the public interest.

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:

The families and citizens that the system is supposed to serve.

The calculation of costs and benefits for 'consumers' of UPF are token, considering the immense harm that they do to the whole community and our health systems.

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Yes

Free text box, no character limit:

Obesity, overweight, and resulting non-communicable diseases are in large part due to diets dominated by Ultra-Processed, junk, food-like, substances. They are deliberately addictive to maximise sales, especially to vulnerable children and low income families.

"In 2018, obesity cost the Australian community \$11.8 billion and if nothing is done, may cost an estimated \$87.7 billion by 2032. There are clear social and health reasons for investing more in obesity prevention so that fewer people's health and wellbeing is negatively impacted by overweight and obesity."

https://www.health.gov.au/sites/default/files/documents/2022/03/national-obesity-strategy-2022-2032-at-a-glance-summary-with-a-logic-framework_0.pdf

FSANZ is not even mentioned in the National Obesity Strategy. How can this be?

Any other comments regarding the Option 2 information in the Net Benefit section?

Yes

Free text box, no character limit:

Marginalising citizens in the 'consumer' ghetto makes the so-called benefits unachievable and irrelevant.

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?

Yes

Free text box, no character limit:

It makes some sense but what does it really mean?

The need for the Act to change was already agreed so 123 pages to convince us was unnecessary.

Is this another example of consultants justifying their seat on the gravy train?

Is the rating assigned to each of the sub-problems appropriate? If not, why?

No

Free text box, no character limit:

It would have been more productive to rate them as opportunities instead of problems.

Our proposal for consensually agreed over-arching principles for the system may help solve "The lack of a shared vision of system priorities between FSANZ and the FMM limits the effectiveness of the broader food regulatory system." It would also be helpful to canvass public preferences and informed opinion.

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:

Here's the the core failure of the present Act and recommended changes must grapple with much more than 'food-related health risks'. The Analysis should as its top priority have simply and directly explored first principles.

P96 of the Impact Analysis wisely says:

"Although FSANZ should already consider both long-term health impacts and immediate health risks in the development and review of food regulatory measures, the lack of an overarching strategic mandate risks hindering the proactive management of food-related health risks. An ambiguous mandate not only compromises the effectiveness of FSANZ in developing and reviewing food regulatory measures, but also the (sic) has major implications for the wellbeing of Australia and New Zealand populations."

This was the first place to begin the discussion and the other minutiae could have been relegated to secondary issues.

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Yes

Free text box, no character limit:

But only if their importance and relevance is kept in perspective.

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:

Unhitch some of the expensive carriages from the gravy train.

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Yes

Free text box, no character limit:

Should have strated from first principles as we have advocated. Of course, they need more work to be fully effective but an open process with the community able to fully participate could achieve great results.

The Impact Analysis should have been simpler and clearer.

It was far too long and complicated for even committed people to read, let alone digest, analyse and reflect on.

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:

All public, as we expect the food system to be.

Response ID [REDACTED]

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
Submitted on 2024-04-10 22:37:53

Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:

Jennifer Thompson

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name::

The Australian Industry Group

Which sector do you represent?

Food Industry

Other: :

The Australian Industry Group - Confectionery Sector

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::

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:

Are there other methodologies or evidence that the Impact Analysis should consider?

Free text box, no character limit:

Section 3 - The problems to solve (Ratings)

Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate?

Not Answered

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem? Please provide justification. (Free text)

Free text box, no character limit:

Section 5 - Options for reform

Component 2.1

Component 2.1.1

Would amending Section 3 and 18 of the Act to include a definition of public health and safety reduce confusion about how FSANZ considers short and long-term risks to health when developing food standards?

Not Answered

Additional comments (optional):

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?

Not Answered

Additional comments (optional):

What would be the impact of clarifying the definition of 'protection of public health and safety' within the Act?

Not Answered

Additional comments (optional):

Component 2.1.2

Would revising the way FSANZ communicates its consideration of Ministerial Policy Guidance in developing food regulatory measures support greater transparency in the development of food regulatory measures?

Not Answered

How could the consideration of Ministerial Policy Guidance in the development of food regulatory measures be effectively communicated?

Free text box, no character limit:

Component 2.1.3

Would new provisions and/or language changes in the Act better support FSANZ to recognise Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

What provisions or language changes could be included in the Act to promote recognition of Indigenous culture and expertise?

Not Answered

Free text box, no character limit:

Component 2.1

Are there other initiatives that should be considered in Component 2.1?

Not Answered

Free text box, no character limit:

Component 2.2

Component 2.2.1

Would the introduction of a risk-based framework support FSANZ to be flexible and proportionate in handling of changes to the Food Standards Code?

Not Answered

Free text box, no character limit:

What criterion and/or evidence should be used to form the basis of a risk framework?

Free text box, no character limit:

What would be the impact of introducing a risk-based framework to guide development of food regulatory measures for you?

Not Answered

Free text box, no character limit:

Component 2.2.2

Would enabling FSANZ to accept risk assessments from international jurisdictions support FSANZ to exercise risk-based and proportionate handling of applications and proposals? How so?

Not Answered

Free text box, no character limit:

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

Not Answered

Free text box, no character limit:

Would introducing a minimal check pathway for very low risk products help FSANZ exercise risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness?

Not Answered

Free text box, no character limit:

Would introducing principles in legislation to allow FSANZ to create other pathways to amend food standards help FSANZ exercise risk-based and proportionate handling of applications and proposals?

Not Answered

Free text box, no character limit:

What would be the impact of introducing new pathways to amend food standards for you?

Not Answered

Free text box, no character limit:

Are there other opportunities relating to new pathways to amend food standards that should be considered?

Not Answered

Free text box, no character limit:

Component 2.2.3

Would increasing opportunities for decision making arrangements to be delegated support FSANZ to be more flexible and efficient? How so?

Not Answered

Free text box, no character limit:

What factors should be considered when determining the level of risk for decision-making arrangements?

Free text box, no character limit:

What would be the impact of streamlining decision-making arrangements for you?

Not Answered

Free text box, no character limit:

What expertise should be considered when determining the delegation of decisions to an alternative person?

Free text box, no character limit:

Component 2.2.4

Would a one-off investment of time and resources to develop and publish a list of traditional foods or ingredients that have undergone nutritional and compositional assessments facilitate entry of traditional foods to market?

Not Answered

Free text box, no character limit:

Would the development of further guidance materials on how traditional foods can be assessed for safety facilitate entry of traditional foods to market? How so?

Not Answered

Free text box, no character limit:

Component 2.2.5

Would resourcing FSANZ to undertake more timely, holistic and regular reviews of standards allow FSANZ to be more strategic and consistent in changes to food standards?

Not Answered

Free text box, no character limit:

Are there other initiatives that should be considered to drive more holistic consideration of food standards?

Not Answered

Free text box, no character limit:

Component 2.2.6

Would the use of Codes of Practice and guidelines better support the implementation of the Food Standards Code and help to address issues that do not warrant the time and resources required to develop or vary a standard?

Not Answered

Free text box, no character limit:

Can you provide an example of an issue that would have been/be better solved by a Code of Practice or guideline?

Free text box, no character limit:

How could the decision pathway for the development of a Code of Practice or guideline be incorporated into the risk framework outlined in Component 2.2.1?

Free text box, no character limit:

What would be the expected impact if Codes of Practice and guidelines were developed for industry, by industry?

Not Answered

Free text box, no character limit:

Component 2.2

Are there other initiatives that should be considered in Component 2.2?

Not Answered

Free text box, no character limit:

Component 2.3

Component 2.3.1

Would amending the compositional requirements of the FSANZ Board increase flexibility and reflect contemporary governance processes?

Not Answered

Free text box, no character limit:

Would amending the nomination process for the FSANZ Board to be an open market process increase efficiency and support a better board skill mix?

Not Answered

Free text box, no character limit:

Component 2.3.2

What would be the expected impact of removing the option for applications to be expedited?

Not Answered

Free text box, no character limit:

Component 2.3.3

What would be the expected impact of the implementation of an industry-wide levy?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

What do you think could be an acceptable range for a levy rate? Please provide your response in Australian Dollars.

Free text box, no character limit:

What would be the expected impact of compulsory fees for all applications?

Not Answered

Free text box, no character limit:

Are there specific entrepreneurial activities that FSANZ should be considering charging for to build up a more sustainable funding base?

Not Answered

Free text box, no character limit:

Component 2.3.4

Would imposing a food recall coordination levy imposition contribute to a more sustainable funding base and support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

How could eligibility criteria for a levy be set so that it is fair, consistent and feasible to administer?

Free text box, no character limit:

Would charging jurisdictions to add additional proposal or project work to FSANZ's workplan meaningfully support FSANZ to rebalance its workload priorities by addressing resourcing pressures? How so?

Not Answered

Free text box, no character limit:

What would be the expected impact of imposing a food recall coordination levy on jurisdictions?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Would it be better to charge a levy per recall, or an annual levy?

Not Answered

Free text box, no character limit:

What would be the expected impact of charging jurisdictions a fee to add additional proposal work to FSANZ's workplan?

Not Answered

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

Are there other initiatives that should be considered in Component 2.3?

Not Answered

Free text box, no character limit:

Component 2.4

Component 2.4.1

Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?

Not Answered

How would this need to be implemented to be successful?

Free text box, no character limit:

What factors should be considered as part of the joint prioritisation matrix?

Free text box, no character limit:

In what ways could FSANZ and FMM work together in a more coordinated way?

Free text box, no character limit:

Component 2.4.2

Would more routine engagement between FSANZ and the FRSC reduce duplication of effort and missed opportunities to manage risk? How so?

Not Answered

Free text box, no character limit:

What approaches could be used to improve collaboration between FSANZ, the FRSC, and the FMM?

Free text box, no character limit:

Component 2.4.3

Would FSANZ assuming a role as a database custodian for Australia meaningfully improve intelligence sharing across the regulatory system?
How so?

Not Answered

Free text box, no character limit:

What types of data would be most useful for FSANZ to curate?

Free text box, no character limit:

Component 2.4.4

Would establishing information sharing arrangements with international partners reduce duplication of effort and missed opportunities to manage risk?

Not Answered

Free text box, no character limit:

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

Component 2.4.5

Would introducing Statements of Intent into food standards meaningfully improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

What should a Statement of Intent include to benefit industry and enforcement agencies to understand and consistently apply food standards?

Free text box, no character limit:

Component 2.4.6

Would FSANZ being resourced to develop, update and maintain industry guidelines improve consistent interpretation and enforcement of food standards? How so?

Not Answered

Free text box, no character limit:

Would amending the Act to allow FSANZ to develop guidelines in consultation with First Nations or Māori peoples support cultural considerations being taken into account in the food standards process?

Not Answered

Free text box, no character limit:

Component 2.4.7

Would FSANZ collaborating with jurisdictional enforcement agencies improve inconsistent interpretation and enforcement of food standards?

Not Answered

Free text box, no character limit:

Component 2.4

Are there other initiatives that should be considered in Component 2.4?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

Are there other costs and benefits that have not yet been qualified or quantified?

Not Answered

Free text box, no character limit:

What are the growth expectations of the First Nations and Māori food sector?

Free text box, no character limit:

What are the current delay costs to industry?

Free text box, no character limit:

Do you have any additional data that would be useful in characterising the costs and benefits of current regulatory settings?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 1 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

Are there other costs and benefits for different stakeholders that have not yet been qualified? What are they?

Not Answered

Free text box, no character limit:

Do you have any additional data that would be useful to characterising the costs and benefits of proposed initiatives?

Not Answered

Free text box, no character limit:

Any other comments regarding the Option 2 information in the Net Benefit section?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation

Section 8 - Best option and implementation (Solving policy problems)

Does the approach to assessing the degree to which an option solves a policy problem make sense? How so?

Not Answered

Free text box, no character limit:

Is the rating assigned to each of the sub-problems appropriate? If not, why?

Not Answered

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

Do you think the delivery risks have been appropriately identified and categorised within the Impact Analysis?

Not Answered

Free text box, no character limit:

Are the delivery risk ratings assigned to each of the sub-problems appropriate?

Not Answered

Free text box, no character limit:

Section 9 - Evaluation of the preferred option

Are there any other factors that should be captured in a future evaluation?

Not Answered

Free text box, no character limit:

Other comments

Is there anything else you want to share with us on the Impact Analysis?

Not Answered

Free text box, no character limit:

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

If you want all or parts of this submission to be confidential, please state which parts and why.

Free text box, no character limit:

The Australian Industry Group (Ai Group) Confectionery Sector welcomes the opportunity to comment on the Department of Health and Aged Care (DHAC) Food Standards Australia New Zealand (FSANZ) Act Review draft Impact Analysis.

Overall, the Ai Group Confectionery Sector supports Option 2 of the Impact Analysis (IA), to modernise the food regulatory settings. We reiterate the assessment made in the draft IA that the FSANZ Act is not broken, that FSANZ is doing a good job and its important work needs to continue.

Notwithstanding, amendment in line with regulatory best practice to achieve efficiencies and effective interactions between all the elements of the food regulatory system is supported. Fundamental to the modernisation of the institutional and operational arrangements of the food regulatory system is a risk-based, proportionate regulatory response and the urgent need for the Commonwealth Government to appropriately resource FSANZ to enable it to perform its core functions.

FSANZ's resourcing can partially be offset through many of the proposed efficiencies, for example collaboration with like-minded international regulatory agencies, reducing work duplication and leveraging information sharing opportunities; improved decision-making pathways; or use of non-food standard regulatory instruments for lower risk issues.

Such efficiencies are expected to incentivise industry innovation; improve regulatory approval timeframes, streamline operations and delivering benefits to government, industry and consumers, alike. For industry, benefits include new approvals reaching the market faster and in turn producing new and innovative products that benefit consumers and offer consumer choice.

However, efficiency gains in themselves will not alleviate FSANZ's current funding shortfall. As a government food regulatory agency providing services for the public good, FSANZ must be funded from by the Commonwealth Government at the level that is required to deliver its core objectives and functions. Notwithstanding, the issue of resourcing FSANZ's current activities should be resolved before additional responsibilities are added to its resource demands.

From an industry (and funding perspective) the Ai Group Confectionery Sector supports retaining the expedited application approval pathway, for the purposes of providing industry with the option for regulatory (approval) processing certainty and the benefits that expediting provides from an innovation and commercial perspective.

The proposed option to introducing a mandatory application fee is not support on the basis it will be prohibitive for some applicants, that could be private citizens or non-government organisations. The burden of a mandatory application fee will be a barrier to innovation and will negatively impact Australia and New Zealand's international competitiveness and its attractiveness as a place to do business.

Equally, the proposed industry levy option is not supported as an option to solving FSANZ's funding woes. In our view a levy could not be applied with fairness or equitably and would merely result in adding administrative burden.

The cost of doing business in Australia and New Zealand is a key consideration for our international competitiveness. In the future, food innovation will become increasingly important as we seek to ensure global food security and ensuring Australia and New Zealand are considered food production powerhouses.

In addition to the Ai Group Confectionery Sector's support of Option 2, of the Impact Analysis to modernise the food regulatory settings, and aside from the specific comments provided herein focused on the critical funding issue, the confectionery industry lends its support to the detailed response provided by the AFGC.

Again, many thanks for the opportunity to comment and if you have any query please do not hesitate to be in contact.

These comments have been emailed directly.