National Farmers Federation

12 May 2021

Ms Christel Leemhuis
Director, Food and Nutrition Policy
Department of Health
GPO Box 9848, MDP 707
CANBERRA ACT 2601

Via email: FoodRegulationModernisation@health.gov.au

Dear Ms Leemhuis,

RE: Review of the Food Standards Australia New Zealand Act 1991 - Draft Regulatory Impact Statement

I am writing to you today regarding the review of the Food Standards Australia New Zealand Act 1991, and as a response to the draft Regulatory Impact Statement. The National Farmers' Federation (NFF) welcomes the opportunity to provide this submission.

The NFF is the national peak body representing farmers and the agriculture sector more broadly across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF recognises the importance of food labelling and associated regulation in achieving our shared ambition of reaching $100 billion in farm gate output by 2030. To this end, NFF supports regulatory reform efforts that modernise and contemporise the FSANZ Act and to reduce, where possible, the regulatory burden imposed by the FSANZ Act. NFF does not support increasing the scope of the FSANZ Act to include environmental sustainability labelling, and the associated regulatory burden.

In reviewing the Draft Regulatory Impact Statement, the NFF notes that *"FSANZ's objectives are currently mute on the issues of food sustainability. This leaves FSANZ no levers to consider sustainability issues when developing or reviewing food regulatory measures."* NFF supports the status quo in this respect.

More broadly, NFF Also opposes the idea that *"... the joint food standards system ... could be broadened to encompass food security, health, economic and social impacts ... the impact of agricultural practices, food processing, distribution, packaging, and other activities in the food supply chain on climate change, biodiversity, soils and waterways, and ultimately future food security."*

More specifically, the Draft Regulatory Impact Statement informs three fundamental reasons for our opposition to the inclusion of environmental or sustainability criteria in a food standards scheme:

- There are no sufficiently developed or supported frameworks in existence that would allow the development of a standards based approach to measuring sustainability or environmental indicators at a landscape level (and it is at best nascent in its development);
- The UN Food Systems Summit 2021 is already at risk of being compromised by the undue influence of sectoral interest groups on the agenda and should not be relied upon as an informative, responsive or representative pathway to reform; and
- Industry is separately and appropriately responding to community expectations through sectoral schemes to assure market access, market premium and/or consumer assurance. It is right and proper that these evolve in a voluntary manner and allow consumers to exercise market choice. (Sustainability and environmental ideals will vary and will be inherently complex to design and unable to reflect market demands if regulated).

Finally, there is no cogent case for a regulatory intervention in sustainability labelling, these are aspirational goals that modern society manages through market behaviour. There are no demonstrable human health nor food safety implications in this context. It is therefore NFF's strong view that the FSANZ objectives remain mute on this topic, it is beyond scope.

Should you have any questions regarding this submission, please contact the NFF's General Manager for Rural Affairs, Mike Darby at [redacted] or [redacted].

Yours sincerely,

[redacted]

TONY MAHAR
Chief Executive Officer

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-13 12:39:12**

About you

What is your name?

Name:
Joanne Cammans

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Government of South Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

While modernisation and legislative reform is required into the future, some caution should also be applied to ensure that the problems are well defined and that the solutions are well matched to these problems.

Policy Problem 1
The Act does not support efficient and effective regulation and is burdensome to administer in its current form.
- Agree. The Act and its functions should be modernised.

Policy Problem 2
Legislation does not enable a strong, resilient, and agile joint food standards system.
- Partly agree. The food regulatory system is generally robust however improvements can be made to enable a more risk proportionate approach to Standards development including developing and reviewing Standards in a risk appropriate way as opposed to a piecemeal approach. The standards' setting process needs to accommodate strategic work that addresses not only individual applicants/business needs, but also enables broader goals that provide the greatest public health benefit to consumers and/or whole industry sector issues that need to be addressed to enable growth and innovation within the appropriate risk framework.

Policy Problem 3
Current arrangements undermine the power of a single, joint food standards system.
- Do not agree. This policy problem does not provide the cost-benefit justification as to why a single, joint food standards system is deemed to be promoted as

being advantageous with the sub-issues described in the draft RIS going beyond the process of standards setting. The joint food regulation system is dependent on several factors including the work of FSANZ in developing Standards, the Food Regulation Standing Committee, the Implementation Sub-Committee for Food Regulation and the Food Ministers Meeting. The current model does not necessarily result in inconsistent interpretation of Standards or variable uptake of best practice regulation. One of the main issues that affects regulatory consistency is poorly written or unclear Standards and/or lack of agreed implementation/guidance documents for regulators and industry. Work currently underway in the P3 modernisation reform work (led by FRSC) is to address this issue in a more holistic way. The FSANZ Act amendments will need to reflect the policy decisions made for the system as a whole where applicable to ensure that the standards setting process and role of FSANZ is in line with these policy decisions.

Other Policy Problem:
There are a number of issues with the current process of developing Standards, which lead to Standards that are not drafted clearly, do not provide certainty and do not enable consistency. These include:
- Advice from regulators is not always considered fully
- Lack of clear communication of intent of regulatory measures
- Lack of appropriate points of engagement with jurisdictions (e.g. a chance to review final drafting of a Standard variation to ensure intent is captured and regulation/ enforceability is considered.
- Lack of understanding of implementation, compliance and enforcement issues
- Legal drafting does not always capture policy intent based on risk
- Ignores strengths and weaknesses of regulators (e.g. health claims developed with a significant burden placed on regulators to evaluate dossiers)

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The majority of the current Act and subsequent FSANZ processes are not broken and consideration could be given to relatively minor adjustments to enable a more flexible and risk-based approach to Standard development. However, it is acknowledged that this Option does not address the policy problems identified and is not in keeping with a modernised regulatory approach.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Objectives in the Act should be consistent with the objectives of the system. The Food Regulation Standing Committee (FRSC), through the work of the Priority 3 reforms, has recently reaffirmed that the objectives in the Overarching Strategic Statement for the food regulatory system are still appropriate. It is envisaged that these objectives will be included in a revised Food Regulation Agreement (FRA). The FRA and Treaty (between Australian and New Zealand governments, concerning a joint food standards system) are the underpinning governance documents that establish the system, and the FSANZ Act is one of the tools used to implement it. Thus, the FSANZ Act should be consistent with the intent in the FRA.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

A streamlined approach based on risk should be further developed including the use of Codes of Practice and guidelines where appropriate.
The risk framework in Table 5 (page 53) sets out risk-based criterion however it is considered that decisions on risk in the food regulatory system should primarily be based on the public health risk. Amendments which have a low public health risk could be considered for either automatic approval, minimal pre or post market evaluation. It is important to note that any amendments from a pre to post market evaluation doesn't remove the regulatory burden on government (not industry), but rather shifts it from FSANZ to jurisdictional regulatory agencies instead (particularly local governments).
In any case the onus should be on industry rather than regulators to hold the evidence that a verified food safety system is in place and implemented, or evidence that substantiates the safety of products where applicable. Risk-based approaches, however, will facilitate a less onerous regulatory process for businesses where there is a lower public health risk and also support cost efficiencies for all.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

While decision making for the FSANZ Board can be considered by this Review, it is not appropriate for the FSANZ Act Review to direct decision-making arrangements for the Food Ministers' Meeting. These are being actively considered by the Priority 3 reform work and it is appropriate that any decisions about this issue be made in the policy area. The outcomes of the Priority 3 reform work should also be considered by the review so that the FSANZ Act does not become an impediment to delegated decision-making.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Supported in Principle.
Flexible approaches are important in any modern regulatory system and innovation is also a driver for efficiencies and advancements. The use of regulatory sandboxes is an important tool in this modernisation agenda however, it is suggested that the use of these models is not within the scope for the review of the FSANZ Act. Instead, these models should be explored as a policy piece in the modernisation work being progressed under Priority 3 as these types of exemptions can only be provided under state and territory Food Acts with regulatory functions rather than within a standard.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

This component has two elements.

Supported - The first element is for more holistic and regular reviews of Standards. This review of food standards should be based on risk; and be timely, holistic and regular.

Not Supported in the context of this review - The second element is equipping FSANZ to have a significant role in food safety research as it relates to the Code. FSANZ already plays a role in this area, if the role is to be expanded it is a resource issue and is not within scope of this review.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

NOT SUPPORTED in the context of this review.
FSANZ is already a respected science-based organisation and its main value is in its independence. FSANZ can already (and should) work with other agencies and share intelligence. As with component 4, any expansion of this role is a resource issue and out of scope of this review.
Intelligence gathering in the food regulatory space also includes information collected by regulators and industry and a main focus should be on enhancing the use and sharing of data appropriately. Intelligence gathering is a focus of the broader reform work across a number of the priorities (e.g. P1 and P2).

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Supported.
Reducing and streamlining Board structure and operations should proceed in line with good regulatory practice.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Partially supported.
Standards development has a significant impact on compliance and enforceability. While guidance in the form of co-developed guidelines and Codes of Practice are useful, the best option to address interpretive uncertainty is to ensure that regulators are fully involved in Standard development, including providing opportunities for jurisdictions to review final drafting.
SA supports in principle FSANZ taking on a role that involves developing guidance for industry and regulators where warranted, particularly as the Standards are predominantly outcomes based, to provide certainty and improve consistency. This could be further enhanced by including 'deemed to comply' provisions – particularly for small businesses. However, any guidance to this effect should be developed in close partnership with regulators in jurisdictions.
Of the suggestions provided in the draft RIS (page 65), SA finds merit in the following and these could be considered as part of Option 2:
• Including a statement of intent alongside food standards in the Food Standards Code (akin to Explanatory Memoranda), noting that regulators should be fully involved in the standards development process is key (as stated above);
• To broaden the definition of food to provide greater clarity to determine if a product is a food or medicine by:
o Providing Ministerial power to determine that a product is not a food; and
o Mirroring the language in the Therapeutic Goods Act to exclude foods which "have a tradition of use as therapeutic goods in the form in which they are presented."

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

NOT SUPPORTED

This proposal would present a serious risk of inefficiency, duplication and delay. This option would not provide certainty in addressing inconsistent enforcement of Standards and involves significant changes to the regulation of food in Australia. This idea is outside of changes to the FSANZ Act and therefore the remit of the draft RIS.
Currently, SA automatically adopts the Food Standards Code into SA law (via the SA Food Regulations 2017). This means that all changes to SA food law bypass SA Parliament and is reliant on the engagement and review of the Minister. States and territories, including local government, undertake monitoring and enforcement of food businesses in their jurisdictions.

Option 3, Component 3 would involve FSANZ expanding its role considerably by taking on an enforcement role. This would mean that SA would be 'directed' by FSANZ. It is unclear how such a proposal would be sustainable or offer any benefit over the current enforcement arrangements and would require SA to effectively cede power to the Commonwealth. This is not a palatable option as there is benefit to states and territories retaining the enforcement function. States and territories are able to be more responsive to businesses and public health incidents, especially in the case of small businesses which make up the majority of SA food businesses. Where there are overlaps, these are dealt with through Memorandums of Understandings and agreements with other regulators. There is also a need to ensure there are no gaps in regulatory coverage, delays in decision-making and critical regulator expertise/capability is maintained and available.

The consistency issue sought to be addressed by this option is being actively considered by the reform work under Priority 3.

In 2011 the then Legislative and Governance Forum on Food Regulation (Food Ministers) responded to the independent Review of Food Labelling Law and Policy conducted by Dr Neal Blewett AC (https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-food-labelling).

This review report made 61 recommendations including Recommendation 61:
Recommendation 61: That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the Food Standards Australia New Zealand Act 1991 to undertake the functions as specified in this Report and more generally to:
(a) be the primary contact for, and source of, food labelling information and advice;
(b) undertake research into food labelling issues;
(c) undertake a general educational role in relation to food labelling issues and requirements;

(d) assist industry to comply with labelling requirements;
(e) act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;
(f) monitor and report on food labelling compliance; and
(g) monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.

In its response to this recommendation, Food Ministers DID NOT SUPPORT this proposal and noted that the review panel considered that statutory requirements for compliance and monitoring should remain as the responsibility of jurisdictions.
Additionally, the Food Ministers' Response to the Blewett Review noted that:
'The proposed labelling bureau would establish another bureaucratic layer to the food regulation system, without providing any additional capacity for enforcement.
This recommendation is intended to address the issue of inconsistent interpretation and enforcement of labelling standards between jurisdictions. However, it is unclear how such a body would provide guidance on enforcement matters when responsibility for enforcement of labelling (and other) standards would remain with individual jurisdictions.' (page 59)

The proposal in Option 3 is that FSANZ would become the single, bi-national regulator for food businesses, and would re-contract the services back to state and territories. This would establish another bureaucratic layer to the food regulatory system which is also counter to recommendations of the recent Review of COAG Councils and Ministerial Forums (Conran Review).

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Refer to previous responses and attached information.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
Final Government of South Australia Submission.pdf was uploaded

Consultation on the FSANZ Act Review draft Regulatory Impact Statement

GOVERNMENT OF SOUTH AUSTRALIA SUBMISSION

GENERAL COMMENTS

Australia and New Zealand's food regulatory system is world class and isn't broken. Best practice regulation is a goal and there is always room for improvement. Any improvements must be closely examined to ensure that the problem being solved is the best option for the system as a whole.

Food Standards Australia New Zealand (FSANZ) is a respected food authority world-wide which hosts a significant knowledge base and provides a solid foundation for Australia and New Zealand's food regulatory system through its development of food standards which are adopted wholly or in part, by all Australian jurisdictions and New Zealand.

The FSANZ Act, however, is not the only tool available to improve the system to make it more agile, consistently applied and support public health and industry development objectives – i.e. achieve the aspirations for the system (provided with the Draft Regulatory Impact Statement (RIS) during consultation). The Food Regulation Agreement and the Food Treaty are significant arrangements which underpin the success of the bi-national system, including the adoption of the Food Standards Code. It is Food Ministers who are the leaders and ultimate decision-makers on policy directions for the system.

The options presented in this draft RIS provide a far-reaching scope of potential amendments to not only the FSANZ Act, but also the way in which the food regulatory system works as a whole. It is considered that the Terms of Reference for this Review are too broad and go beyond the established role of FSANZ and the Act. Additionally, some Options and parts of Options are out of scope and are more appropriately addressed in the broader reform work for the system that is currently underway.

While modernisation and legislative reform is required into the future, some caution should also be applied to ensure that the problems are well defined and that the solutions are well matched to these problems.

POLICY PROBLEMS

Three broad policy problems are identified in the draft RIS:

Policy Problem 1 | The Act does not support efficient and effective regulation and is burdensome to administer in its current form**.**

- Agree. The Act and its functions should be modernised.

Policy Problem 2 | Legislation does not enable a strong, resilient, and agile joint food standards system**.**

- Partly agree. The food regulatory system is generally robust however improvements can be made to enable a more risk proportionate approach to Standards development including developing and reviewing Standards in a risk appropriate way as opposed to a piecemeal approach. The standards' setting process needs to accommodate strategic work that addresses not only individual applicants/business needs, but also enables broader goals that provide the greatest public health benefit to consumers and/or whole industry sector issues that need to be addressed to enable growth and innovation within the appropriate risk framework.

Policy Problem 3 | Current arrangements undermine the power of a single, joint food standards system.

- Do not agree. This policy problem does not provide the cost-benefit justification as to why a single, joint food standards system is deemed to be promoted as being advantageous with the sub-issues described in the draft RIS going beyond the process of standards setting. The joint food regulation system is dependent on several factors including the work of FSANZ in developing Standards, the Food Regulation Standing Committee, the Implementation Sub-Committee for Food Regulation and the Food Ministers Meeting. The current model does not necessarily result in inconsistent interpretation of Standards or variable uptake of best practice regulation. One of the main issues that affects regulatory consistency is poorly written or unclear Standards and/or lack of agreed implementation/guidance documents for regulators and industry. Work currently underway in the P3 modernisation reform work (led by FRSC) is to address this issue in a more holistic way. The FSANZ Act amendments will need to reflect the policy decisions made for the system as a whole where applicable to ensure that the standards setting process and role of FSANZ is in line with these policy decisions.

Regulatory Burden of Standards and Scope of Review

Page 18 of the draft RIS states that regulatory burden associated with the actual contents of food is out of scope:

'*When considering regulatory burden, there is an important distinction to note between burden incurred under the Act and that of specific food standards;* ***in the context of the Act, regulatory burden relates to the processes*** *for changing food standards. There is a separate concept of* ***burden associated with the actual contents of food standards****, and while this is something FSANZ must systematically consider in its work, it* ***is out of scope for this review****.'*

Consequently, burden associated with enforcement of standards is also out of scope.

As articulated in the aspirations document (provided with the draft RIS), the system should be responsive and the process for setting and changing food standards needs to support this.

There are a number of issues with the current process of developing Standards, which lead to Standards that are not drafted clearly, do not provide certainty and do not enable consistency. These include:

- Advice from regulators is not always considered fully
- Lack of clear communication of intent of regulatory measures
- Lack of appropriate points of engagement with jurisdictions (e.g. a chance to review final drafting of a Standard variation to ensure intent is captured and regulation/ enforceability is considered.
- Lack of understanding of implementation, compliance and enforcement issues
- Legal drafting does not always capture policy intent based on risk
- Ignores strengths and weaknesses of regulators (e.g. health claims developed with a significant burden placed on regulators to evaluate dossiers)

Removing regulatory burden within the appropriate risk framework and best practice regulation is supported. For example, regulatory measures include not only Standards but also Codes of Practice and Guidelines. The process of developing all of these tools should use the Integrated Model (i.e. Jurisdictions involvement in a parallel process of considering regulatory issues) – the Integrated Model process was initially developed as the standards development process was not adequately addressing jurisdictional perspectives around implementation and enforceability.

OPTIONS

Option 1 – Status Quo

The majority of the current Act and subsequent FSANZ processes are not broken and consideration could be given to relatively minor adjustments to enable a more flexible and risk-based approach to Standard development. However, it is acknowledged that this Option does not address the policy problems identified and is not in keeping with a modernised regulatory approach.

Option 2 – Modernise the Act, make it agile, resilient and fit-for-purpose – CONDITIONALLY SUPPORTED

This Option provides a pathway to explore a number of amendments that would address the majority of the policy problems identified and provide a modernised legislative approach in keeping with other reform work.

Component 1 | Clarify objectives and functions and reflect these in the Act

Supported.

Objectives in the Act should be consistent with the objectives of the system. The Food Regulation Standing Committee (FRSC), through the work of the Priority 3 reforms, has recently reaffirmed that the objectives in the Overarching Strategic Statement for the food regulatory system are still appropriate. It is envisaged that these objectives will be included in a revised Food Regulation Agreement (FRA). The FRA and Treaty (between Australian and New Zealand governments, concerning a joint food standards system) are the underpinning governance documents that establish the system, and the FSANZ Act is one of the tools used to implement it. Thus, the FSANZ Act should be consistent with the intent in the FRA.

Component 2 | Facilitate risk-based approaches to developing or amending food regulatory measures

Supported.

A streamlined approach based on risk should be further developed including the use of Codes of Practice and guidelines where appropriate.

The risk framework in Table 5 (page 53) sets out risk-based criterion however it is considered that decisions on risk in the food regulatory system should primarily be based on the public health risk. Amendments which have a low public health risk could be considered for either automatic approval, minimal pre or post market evaluation. It is important to note that any amendments from a pre to post market evaluation doesn't remove the regulatory burden on government (not industry), but rather shifts it from FSANZ to jurisdictional regulatory agencies instead (particularly local governments).

In any case the onus should be on industry rather than regulators to hold the evidence that a verified food safety system is in place and implemented, or evidence that substantiates the safety of products where applicable. Risk-based approaches, however, will facilitate a less onerous regulatory

process for businesses where there is a lower public health risk and also support cost efficiencies for all.

Decision making arrangements allowing for delegation

While decision making for the FSANZ Board can be considered by this Review, it is not appropriate for the FSANZ Act Review to direct decision-making arrangements for the Food Ministers' Meeting. These are being actively considered by the Priority 3 reform work and it is appropriate that any decisions about this issue be made in the policy area. The outcomes of the Priority 3 reform work should also be considered by the review so that the FSANZ Act does not become an impediment to delegated decision-making.

Component 3 | Build in flexibility to create bespoke regulatory sandboxes[1]

Supported in Principle.
Flexible approaches are important in any modern regulatory system and innovation is also a driver for efficiencies and advancements. The use of regulatory sandboxes is an important tool in this modernisation agenda however, it is suggested that the use of these models is not within the scope for the review of the FSANZ Act. Instead, these models should be explored as a policy piece in the modernisation work being progressed under Priority 3 as these types of exemptions can only be provided under state and territory Food Acts with regulatory functions rather than within a standard.

Component 4 | Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation

This component has two elements. The first element is for more holistic and regular reviews of Standards (*Supported)*. This review of food standards should be based on risk; and be timely, holistic and regular.

The second element is equipping FSANZ to have a significant role in food safety research as it relates to the Code (*Not Supported* in the context of this review). FSANZ already plays a role in this area, if the role is to be expanded it is a resource issue and is not within scope of this review.

Component 5 | Foster new approaches to working with other agencies, with a focus on intelligence-sharing

FSANZ is already a respected science-based organisation and its main value is in its independence. FSANZ can already (and should) work with other agencies and share intelligence. As with component 4, any expansion of this role is a resource issue and out of scope of this review. *NOT SUPPORTED* in the context of this review.

[1] A regulatory sandbox generally refers to a regulatory "safe space" that creates an environment for businesses to test products with less risk of being "punished" by the regulator for non-compliance. In return, regulators require applicants to incorporate appropriate safeguards to insulate the market from risks of their innovative business. It typically involves a framework set up by a regulator to allow pilot testing of innovations by private firms in a controlled environment (e.g. exemptions, allowances, time-bound exceptions etc.) overseen by regulators.

Intelligence gathering in the food regulatory space also includes information collected by regulators and industry and a main focus should be on enhancing the use and sharing of data appropriately. Intelligence gathering is a focus of the broader reform work across a number of the priorities (e.g. P1 and P2).

Component 6 | Streamline FSANZ's governance and operations.

Supported. Reducing and streamlining Board structure and operations should proceed in line with good regulatory practice.

Option 3 | Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system – CONDITIONALLY NOT SUPPORTED

Option 3 is generally not supported by SA government as it does not effectively address the intent of the review and has implications for South Australia's sovereignty and regulatory role.

Component 1 | Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative

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.

Component 2 | Provide for FSANZ to give greater guidance on food standards

Partially supported. As iterated above, Standards development has a significant impact on compliance and enforceability. While guidance in the form of co-developed guidelines and Codes of Practice are useful, the best option to address interpretive uncertainty is to ensure that regulators are fully involved in Standard development, including providing opportunities for jurisdictions to review final drafting.

SA *supports in principle* FSANZ taking on a role that involves developing guidance for industry and regulators where warranted, particularly as the Standards are predominantly outcomes-based, to provide certainty and improve consistency. This could be further enhanced by including 'deemed to comply' provisions – particularly for small businesses. However, any guidance to this effect should be developed in close partnership with regulators in jurisdictions.

Of the suggestions provided in the draft RIS (page 65), SA finds merit in the following and these could be considered as part of Option 2:

- Including a statement of intent alongside food standards in the Food Standards Code (akin to Explanatory Memoranda), noting that regulators should be fully involved in the standards development process is key (as stated above);

- To broaden the definition of food to provide greater clarity to determine if a product is a food or medicine by:
  - Providing Ministerial power to determine that a product is not a food; and
  - Mirroring the language in the *Therapeutic Goods Act* to exclude foods which "have a tradition of use as therapeutic goods in the form in which they are presented."

Component 3 | Position FSANZ to take on an enforcement role

Not supported. This proposal would present a serious risk of inefficiency, duplication and delay. This option would not provide certainty in addressing inconsistent enforcement of Standards and involves significant changes to the regulation of food in Australia. This idea is outside of changes to the FSANZ Act and therefore the remit of the draft RIS.

Currently, SA automatically adopts the Food Standards Code into SA law (via the SA Food Regulations 2017). This means that all changes to SA food law bypass SA Parliament and is reliant on the engagement and review of the Minister. States and territories, including local government, undertake monitoring and enforcement of food businesses in their jurisdictions.

Option 3 would involve FSANZ expanding its role considerably by taking on an enforcement role. This would mean that SA would be 'directed' by FSANZ. It is unclear how such a proposal would be sustainable or offer any benefit over the current enforcement arrangements and would require SA to effectively cede power to the Commonwealth. This is not a palatable option as there is benefit to states and territories retaining the enforcement function. States and territories are able to be more responsive to businesses and public health incidents, especially in the case of small businesses which make up the majority of SA food businesses. Where there are overlaps, these are dealt with through Memorandums of Understandings and agreements with other regulators. There is also a need to ensure there are no gaps in regulatory coverage, delays in decision-making and critical regulator expertise/capability is maintained and available.

The consistency issue sought to be addressed by this option is being actively considered by the reform work under Priority 3.

Labelling Logic: *Review of Food Labelling Law and Policy (2011)* (Blewett Review)

In 2011 the then Legislative and Governance Forum on Food Regulation (Food Ministers) responded to the independent Review of Food Labelling Law and Policy conducted by Dr Neal Blewett AC (https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-food-labelling).

This review report made 61 recommendations including Recommendation 61:

Recommendation 61: That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the *Food Standards Australia New Zealand Act 1991* to undertake the functions as specified in this Report and more generally to:

(a) be the primary contact for, and source of, food labelling information and advice;
(b) undertake research into food labelling issues;
(c) undertake a general educational role in relation to food labelling issues and requirements;
(d) assist industry to comply with labelling requirements;

(e) act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;
(f) monitor and report on food labelling compliance; and
(g) monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.

In its response to this recommendation, Food Ministers *did not support* this proposal and noted that the review panel considered that statutory requirements for compliance and monitoring should remain as the responsibility of jurisdictions.

Additionally, the Food Ministers' Response to the Blewett Review noted that:
'*The proposed labelling bureau would establish another bureaucratic layer to the food regulation system, without providing any additional capacity for enforcement.*
This recommendation is intended to address the issue of inconsistent interpretation and enforcement of labelling standards between jurisdictions. However, it is unclear how such a body would provide guidance on enforcement matters when responsibility for enforcement of labelling (and other) standards would remain with individual jurisdictions.' (page 59)

The proposal in Option 3 is that FSANZ would become the single, bi-national regulator for food businesses, and would re-contract the services back to state and territories. This would establish another bureaucratic layer to the food regulatory system which is also counter to recommendations of the recent Review of COAG Councils and Ministerial Forums (Conran Review).

Alignment with the Aspirations
It is very important that the FSANZ Act review aligns with other work on the Modernisation of the Food Regulatory System, including the Aspirations of the Food Regulation System. It is important to note that the FSANZ Act is only one component of the bi-national food regulatory system. The FSANZ Act provides a mechanism for setting standards that implement the aspirations of the system. It is therefore important that the policy decisions made for the system (by Food Ministers) are reflected in the FSANZ Act.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-17 17:25:12**

About you

What is your name?

Name:
Melissa Toh

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
Yes

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Nestle Australia Ltd and Nestle New Zealand Limited

Which country are you responding from?

Drop down list about which country the respondent is based:
Trans-Tasman organisation

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Please note only a couple of responses are confidential, the rest are not confidential. Where the response is confidential we have marked 'Confidential' as the heading for that response.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS has been thoroughly thought out and the Policy problems already identified are quite broad, covering many components and we consider that these are ambitious plans needing focus and attention without need for dilution. Therefore, we consider there are no other key policy problems that should be considered at present as part of this regulatory impact analysis.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Environmental regulations have been in place for a very long time and it is an area that the industry have managed and reported on for many years. With Sustainability becoming a focus and priority from a consumer and industry perspective we are seeing a broadening of what needs to be considered under Sustainability in general. The previous focus was in waste and effluent management as well as material management about waste to landfill, water management and basic recycling. What we have before us today can be couched into clear Sustainability pillars – Environmental footprint which encompasses (greenhouse gases, water and energy), Packaging (Recyclability, Recycled Content, other end of life options) and Respons ble Sourcing and Regenerative Agriculture with a focus on (soils, biodiversity and deforestation.)
The Draft RIS states that ‘industry can make unregulated claims regarding environmental sustainability’. We do not agree with this statement at all as any claims

made are subject to the ACCC in general terms but also more specifically under the ACCC ‘Green Marketing and the Australian Consumer Law’ document. If we make environmental claims about what the Business is doing or about a product in the area of sustainability, it needs to be clearly and accurately explained, be honest and truthful, be specific, applying language which the average member of the public can understand and explain the significance of the benefit and underpinned by robust substantiation.
Nestlé have made public sustainability commitments and established global targets and are well on the journey across a broad spectrum of sustainability topics. We consider that there is already a very established infrastructure in place with regard to any information or claims made in this area. Nestlé do not support this as a topic to be addressed by FSANZ and consider that there is already a plethora of policy, regulatory and self-regulatory instruments which address these concerns. If any further regulation is required then we consider it to be better placed within the Dept. of Agriculture, Water and Environment (DAWE).

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Nestlé considers that an inclusive approach to food regulation is important and should enable indigenous food management and culture as part of the overall framework. We consider that there already is an assessment option established through the Advisory Committee on Novel Foods (ANCF) ‘Record of Reviews’ which is a considered judgement of the product on the basis of information provided by inquirers as well as some independent research by FSANZ.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current regulatory status quo is sub-optimal and does not facilitate innovation. This option is also decades old, and a modernisation of the food regulatory system is long overdue to address the issues of an aging regulatory system that is not flex ble and agile to keep pace with changes in technology and food trends.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The Australian and New Zealand food Industry will fall behind the rest of the world in innovation and the ability to communicate and trade that innovation. As a consequence, consumers would be impacted by not receiving the best that innovation can offer.
The ANZ food regulatory system must explicitly recognise the importance of the ANZ food industry as an economic engine of both countries. While it is essential to protect the health and safety of ANZ consumers, the food regulatory system must be charged with taking a broader focus, one that also supports industry innovation capacity. Inward-looking regulation can kill innovation, product development and stifle the export led growth that is the future of the ANZ food industry.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

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[redacted]

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Nestlé notes that the current system is well respected as a robust process however it is no longer able to keep pace with the rate of change in the food sector. Industry bears the cost of:
• lost cross border e-commerce sales
• lost manufacturing for export opportunities
• loss of brand recognition and market share
to other countries who are able to introduce innovation at a faster pace.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Nestlé notes the FSANZ A1155 Supporting Document 5 - Innovation in the manufactured food and infant formula sectors may help provide data in response to this question.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See above answer for Question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Option 2 invokes change to the current regulatory system and improves it and therefore we largely support this option. In terms of Component 1 - Clarify objectives and functions and reflect these in the Act, we support the ambition to remove ambiguity and create a clear set of legislated priorities for FSANZ to deliver on. We largely support sub-components 1-3, but do not support sub-component 4 and reserve our views for sub-component 5. Our summary comments on each sub-component is as follows:

1.Aligning wording around public health protection across s 3 and s 18
Nestlé supports this.

2. Expanding the objectives of FSANZ to recognise trade as a core goal.

Nestlé supports recognising trade as an essential consideration but wonders as to whether it is best placed as an objective for FSANZ since an objective relating to food industry efficiency and competitiveness implies some measure of accountability of industry performance on FSANZ. We also consider that FSANZ is already supporting industry innovation and therefore trade, within the current constraints they operate in. Establishing trade as a core goal for FSANZ would be a moot point if the regulatory change supporting trade and innovation is rejected or compromised by those that vote for it. Nestlé would therefore rather see this objective placed on the decision makers of the food regulatory system - the health jurisdictions.

As such we propose trade being a core goal to be placed into the Food Regulation Agreement, so that Ministers and Jurisdictions are required to include industry innovation and international competitiveness in their weighing of evidence for new or amended food standards.

3. Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.

Nestlé supports this approach as it encourages improved dialogue and interaction between Ministers that can better provide context to frame the discussion of the review. This will also help bring a more balanced view to the table. Nestlé would also l ke to comment that the requirement to meet is not limited to a physical face-to-face meeting, and that virtual meetings are also permitted (so as not to delay the timeline). This is an essential consideration especially when we are operating during challenging pandemic times.

4. Expanding the objectives of FSANZ to address important priorities of food sustainability.

Nestlé does not support the inclusion of food sustainability into FSANZ's objectives. The area of food sustainability is extremely broad and subject to fast change. Representations about sustainability are treated no differently to other representations not currently captured by the Food Standards Code, such as Organic, Natural, Vegan/Vegetarian to name a few. These are currently captured under Consumer Protection Law. We consider that other government agencies in both Australia and New Zealand are better suited to deal with sustainability. Nestlé would prefer FSANZ (Food Standards Australia and New Zealand) focuses on other priorities in this ambitious reform agenda.

5. Expanding the objectives of FSANZ to include recognition of indigenous culture and expertise.

Nestlé expresses support for the objectives to include recognition of indigenous culture and expertise.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

Nestlé does not support that FSANZ's objectives be broadened to include sustainability.

What we have before us today can be couched into clear Sustainability pillars – Environmental footprint which encompasses (greenhouse gases, water and energy), Packaging (Recyclability, Recycled Content, other end of life options) and Responsible Sourcing and Regenerative Agriculture with a focus on (soils, biodiversity and deforestation.)
We consider that there is already a very established infrastructure in place regarding any information or claims made in this area. Nestlé do not support this as a topic to be addressed by FSANZ and consider that there is already a plethora of policy, regulatory and self-regulatory instruments which address these concerns. Currently we see non health related claims such as organic, vegan, vegetarian and natural being regulated by consumer law. If any further regulation is required then we consider it to be better placed within the Dept. of Agriculture, Water and Environment (DAWE).

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Nestlé considers that economic opportunities will certainly arise from a greater focus on sustainability. "70% of consumers say that if brands don't ta k about their sustainability efforts, they assume they are not doing anything at all" (JWT Innovation Group/SONAR online research: UK, AU, US, CN June 2018). Sustainability is a growing trend and consumers are starting to expect products that delivers both on sustainability as well as one or more of the main consumer health benefits. Many parts of industry are already working towards sustainability across the entire value change. Nestlé has many action plans to target achieving zero net emissions by 2050 and we have made many public sustainability commitments and targets and are well on our way to achieving these. The industry must rise to the challenge and change the way we do Business today to ensure longevity of the industry and ensuring our consumers are engaged and informed about our role.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Nestlé considers that an inclusive approach to food regulation is important and should enable indigenous food management and culture as part of the overall framework. We consider that there already is an assessment option established through the Advisory Committee on Novel Foods (ANCF) 'Record of Reviews' which is a considered judgement of the product on the basis of information provided by inquirers as well as some independent research by FSANZ.
The inclusion of more native foods and ingredients could help support the availability and equity of indigenous foods around the country. This would facilitate innovation with new ingredient poss bilities providing both provenance and broad economic benefits.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Nestlé considers that new ingredients and new foods to Market could facilitate innovation and could provide commercial benefits for indigenous communities as well as expanding provenance led innovations and claims. Native ingredients and use within the food supply could also potentially help support cultural awareness and understanding of these traditional foods.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé is generally supportive of the elements in Option 2. Specific comments on the sub-components as follows:
1. Leveraging other regulatory instruments, i.e., guidelines and codes of practice
Nestlé generally supports guidelines and codes of practice to help guide interpretation of regulatory intent. This however comes with qualified support. We are potentially concerned with this note: "Note however, because codes of practice are not necessarily binding, ancillary legislation within each jurisdiction could be required to give them enforceable effect."
We consider that making guidelines and Codes of practice legally enforceable with associated penalties defeats the purpose of guidelines and Codes of practice in the first place. The paper also states that 'FSANZ can make changes to guidelines without external consultation, and it can make changes to codes of practice following consultation (limited or broad, depending on magnitude of the change) but does not require ratification from the Food Ministers' Meeting." This may have an unintended consequence of insufficient stakeholder consultation, which is acceptable for documents that are not legally binding, but unacceptable if subsequently enshrined in enforceable state legislation.

2. Streamlining current pathways to amend food standards, including through expanded use of the process for minor variations, delegation of the FSANZ Board

or the Food Ministers' Meeting decision-making and acceptance of risk assessments from overseas jurisdictions

Nestlé provides qualified support regarding the delegation of decision-making. We support -
a) FSANZ CEO to sign off Minor procedures addressing typographical errors and drafting clarity,
b) FSANZ Board to sign off low-risk Applications e.g. processing aids, food additives, MRLs (maximum residue levels) where international precedent is favourable,
c) Forum continues to sign off on Proposals and complex/contentious Applications.

Nestlé does not support the idea presented in the RIS paper for the preservation of two-step decision-making arrangements in ALL situations. For example. In complex and contentious Applications, we do not support for the Minister to delegate the decision to particular department officials.

3. Creation of new pathways to expediate low-risk amendments including automatic adoption of new standards from select international regulatory systems, minimal check pathways and an industry self-substantiation pathway.

Enhanced existing pathways – Applications and Proposals
Nestlé strongly supports this initiative. There are substantial benefits for speed and minimisation of duplicate efforts especially where a key credible international jurisdiction has already approved and ingredient or a claim.

In A1173, the minimum protein level in follow-on formula had already been permitted in key international regulations l ke Codex and EU, yet had to still follow the standard statutory 9 month general procedure Application timeline in Australia and New Zealand. In A1155, the Application took over 3 years from start clock to gazettal, despite having been approved in the EU and no questions asked by the US FDA, and the ingredients being sold in products launched in over 70 countries, with no evidence of market failure. These 2 examples demonstrate a strong need to enhance and expedite current regulatory pathways to support innovation, trade, and optimal nutrition for the consuming population.

In considering this approach, FSANZ may need to 'harmonise' processes with credible international jurisdictions for efficient adoption of international risk assessments, for example in areas where the approach might be universal (e.g. review of toxicity studies). FSANZ would still have local regulatory oversight in localised areas, and could 'tune' some elements of such risk assessments/risk management to ANZ conditions e.g. labelling and dietary modelling.

Automatic adoption
Nestlé does not support this option and is concerned with adoption being 'automatic' and not requiring public consultation. While in principle this could support speed and agility, it may inadvertently lead to some issues being missed. For example, there could be instances where existing permissions may be retracted because of new evidence, or min max levels in regulation being altered. This could affect the compliance of products currently on the market. If this option was to be pursued, at minimum we would ask for consideration of transitional periods for areas where the permission is existing, but is being modified.
Nestlé instead believes that some elements of this option, can instead be blended into the 1 option with 'minimal checks'.
Minimal checks
Nestlé supports in principle this option, but also wonders if this element can be merged or considered within 'enhanced' Proposals.
One example that would work well in this area is Maximum residue limits (MRLs). FSANZ currently has a routine annual review of MRLs around agricultural and veterinary (agvet) chemicals for use in Australia. This includes consideration of MRLs gazetted by the Australian Pesticides and Veterinary Medicines Authority (APVMA), as well as Codex MRLs.

Industry self-substantiation
Nestlé supports the current regulatory status quo for industry self-substantiation of low risk ingredients and notified self-substantiation food health relationships.
Nestlé does not support food additives to fall within this pathway particularly those that have not yet been pre-approved anywhere else in the world to be self-substantiated and we consider these ingredients still require regulatory oversight for safety. Internationally, food additives have to go through a pre-market assessment for safety.
Beyond the example of food additives listed in the RIS paper, we are unsure as to what 'NEW' areas this pathway may relate to, beyond the current regulatory status quo.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Nestlé supports -
a) FSANZ CEO to sign off Minor procedures addressing typographical errors and drafting clarity,
b) FSANZ Board to sign off low-risk Applications e.g. processing aids, food additives, MRLs (maximum residue levels) where international precedent is favourable,
c) Forum continues to sign off on Proposals and complex/contentious Applications.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Guidelines such as the current FSANZ user guides are helpful to guide regulatory interpretation of the Food Standards Code. One area that could benefit from a guideline is in the area of new ingredients, to guide determination of what ingredients require pre-market assessment by FSANZ, versus being industry substantiated. The issue with regulatory clarity on this topic was outlined in P1044.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

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[redacted]

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

CONFIDENTIAL
[redacted]

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé welcomes the idea of a regulatory ‘sandbox’ as a modern and unique approach which supports the ideal of a responsive regulatory system that enables research and testing to optimise both industry and consumer outcomes. We presume this will only be appropriate for low risk activities or technical non-compliance type activities and consider that food safety topics in general will be likely excluded.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Nestlé welcomes the idea of a regulatory ‘sandbox’ as a modern and unique approach which supports the ideal of a responsive regulatory system that enables research and testing to optimise both industry and consumer outcomes. We presume this will only be appropriate for low risk activities or technical non-compliance type activities and consider that food safety topics in general will be likely excluded.
An example could be around non-food safety label information – extended labelling has been a topic considered for many years and we have implemented it in part through providing more information to the consumer via QR Codes or barcode scanning however we have never as an industry been able to trial – Non-food safety information being provided to the consumer exclusively off label. We don’t have the regulatory framework to be able to do that currently, but we definitely see that this may be possible under this ‘sandbox’ concept.
Another example where a regulatory sandbox could be beneficial is where there are multiple Government Departments involved in a challenge or issue at both the State and National level (Health, Agriculture, jurisdictions) that requires a pragmatic solution to resolve or manage the compliance risk. Currently this is a very difficult space to navigate and hard to find an agreed path to manage a regulatory unintended non-compliance situation. It often ends in impractical, unsustainable and costly interim solutions. This type of situation often has a flow on affect to the product where over management of stock causes disruption to the flow of product to Market and affects the freshness of the stock as well as shelf life. Engagement from a Business to Government level especially when it involves many different Departments can seem at times extremely obstructionist inefficient and very bureaucratic. Nestlé have a specific example which can be shared if required.
Overall a regulatory sandbox is a welcomed idea and whilst we still need to understand the extent in which it will work and how it will potentially be beneficial it feels very much l ke part of a modern efficient regulatory framework.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé supports all proposed components however with caution. These components must avoid diluting FSANZ core focus and disrupting timelines. Such activities must be adequately (and separately) resourced. There also needs to be a consideration of commercial in confidence information. Nestlé has no issue should that be the case.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Nestlé supports FSANZ role in food safety management including collecting and analysing data as well as responding and communicating on issues which will help lower the burden of food safety outbreaks in the community. FSANZ has a strong and cred ble reputation internationally already and we consider further formalisation of this food safety role will only further consolidate FSANZs contr bution which also encompasses the Australian and New Zealand food industry's strong and much trusted reputation.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé generally supports fostering new approaches to working with other agencies, with a focus on intelligence-sharing and provides specific comments on the following:
FSANZ and the Food Ministers' Meeting could undertake periodic joint agenda-setting to agree on the proposals on which to focus
Nestlé supports that the review of the workplan and FSANZ's capacity should not displace the progress of paid applications, which are subject to statutory timeframes.
For Proposals - while dialogue and collaboration is positive in general with this proposal, the only caution we highlight is the potential for, or perception of, FSANZ's independence being compromised. Rather than 'joint' agenda-setting where decisions may be taken jointly, we should propose that FSANZ is present to share information that may be useful to inform and contextualise the decisions where the Ministerial Forum would be accountable for (not FSANZ).

FSANZ could partner with government to make intelligence-led decisions and reduce duplication of efforts
Nestlé support all three elements within this proposal. Upstream opportunities to inform intelligence-led decisions helps facilitate a more efficient process downstream when it comes to regulatory change. In the area of emerging risks especially when supplemented by a proposal for FSANZ to be the engine of food safety intelligence, it makes sense for FSANZ to be able to input and collaborate with jurisdictions. International partnerships with overseas jurisdictions (including standard-setting bodies and other regulators) would certainly help complement a proposed enhanced Application and Proposal process that embraces mutual recognition and facilitates speed and agility.
FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.
Finally, In terms of availability of FSANZ's data bank to other external stakeholders, as long as confidential data shared with FSANZ is out of scope of this proposal, Nestlé would support this approach.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Nestlé appreciates that there is cost borne by FSANZ in generating this repository of data and to provide data linkage services. It is understandable that FSANZ could seek cost recovery of this investment from recipients of this data. We provide qualified support in this area, in that we consider that aspects of food safety and anything in the public health interest in relation to food safety should be free. In other areas we would be open to pay for data or data-linkages however would seek further information in this area in order to understand it better. Costs should also not be overly prohibitive such that there will be no recipients and uptake of this proposal.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Nestlé has no strong views around FSANZ Board arrangements and investment into business solutions that can help staff work more efficiently. We provide the following comment in relation to Board size - the essential requirement is to have a competent, skills-based board. Board diversity is also an important factor, particularly in reflecting views of the broad community. While a smaller agile board offers some benefit, the competency, skills and diversity criteria are more important. Regarding business solutions, we consider that anything to make FSANZ operations more efficient and to embrace technology is positive, and that it should be part of the continuous improvement culture, not necessarily to be considered within the scope of the FSANZ Act review.
In terms of new cost-recovery mechanisms for industry-initiated work, while Nestlé appreciates the need to consider FSANZ's investment into resources to provide pre-application advice, we also consider that the current charges are already costly. This proposal potentially exacerbates the current issues and additional costs would provide less of an incentive to innovation. Rather than proposing additional costs, we would support instead a review to reduce costs. We consider that 'enhanced' Application processes that embrace mutual recognition of key cred ble international jurisdictions, as well as considering a harmonised Application format, will streamline and reduce regulatory costs and burden not only for industry, but also for FSANZ.
Note: The applications to the European Union are free.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Option 2 is overall positively supported. Any risks with specific components have been raised already in the previous responses to earlier questions. The overall risk to be considered is also how much work needs to be done to achieve these ambitions of reform. The risk for industry would be ineffective prioritisation of the reform work which then negatively dilutes the speed and agility of implementation.
In terms of the magnitude of consequences, a specific call-out would be should the current Application and Proposal process remain unchanged, industry would fall behind in bringing innovation to market. The inability to compete effectively has economic consequences particularly for trade.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The RIS paper mainly considers qualitative costs at this point in time, and most benefits and risks have been commented on. We would like to provide a general comment that overall, if part of Option 2 seeks to improve efficiencies and streamline operations, this reduced cost could be diverted to other complementary investments, such as FSANZ being the engine of intelligence for food safety. The recipients of the benefits of a regulatory system that supports innovation and trade in food, is not limited to any one stakeholder, and ultimately, the Australian and New Zealand consuming population will be the biggest recipient of all.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Nestlé does not have any comments here.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Overall we understand that the ambitious reform agenda comes at cost, and if prioritisation is unable to be achieved, we support that other cost recovery mechanisms should be investigated.
Currently, the status quo is that the main cost recovery mechanism relates to Applications to vary the Food Standards Code where the Applicant has initiated the change. In terms of broadening cost recovery beyond Applications, we provide qualified support in this area, in that we consider that aspects of food safety and anything in the public health interest in relation to food safety should be free. In other areas we would be open to cost recovery mechanisms however would seek further information in this area in order to understand it better. So for example we would potentially be open to cost recovery mechanisms on economic trade data of new ingredients from a data repository (such as the work FSANZ did with external consultants in this area for A1155), and for expertise support on health claims dossiers, however we would not support a suggestion for enforcement costs to be borne by industry.
Additional fees could further limit innovation. In recent years, substantially more applications /notifications for novel foods have been submitted in Europe and USA than in ANZ.
Although applications for EU health claim applications that fall into Regulation (EC) 1924/2006 Art.14(1)(a) 'Risk Reduction Claims' in the last 5 years (2015 onwards) have been minimal, there have been 6 applications, in comparison to no high level health claim applications in Australia or New Zealand.
In general, costs should also not be overly proh bitive such that there will be no recipients and uptake of this proposal.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Nestlé considers that costs in making Applications could be barriers to innovation. We can see this evidenced with how more approvals are done in the EU and subsequently more product launches as compared to ANZ. Even if costs in ANZ are invested, this also does not necessarily deliver a successful outcome. In A1155, the approval of human identical milk oligosaccharides resulted in permissions granted for a much narrower scope of products where addition was permitted compared to what the Applicant had applied for (in a paid Application). In terms of cost recovery in a broader range of activities, it is difficult to answer this at this stage without a full appreciation of what the returns in investing that cost would be.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Nestlé has been involved in a few Applications to vary the Food Standards Code. From our experience it is not often that regulatory change is sought, due to the complexity and hurdles that could be presented, including the cost investment, the time investment, and other considerations like the need to invest into clinical human trials and scientific research where the Application handbook warrants this level of evidence. The potential hurdles are compounded where there is no guaranteed successful outcome, and there have been situations where the decision-makers have not agreed with the FSANZ Approval reports.
Over the last 10 years, it has been evident from the FSANZ workplan that Applications that relate to ‘true’ nutritional innovation, are limited.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Nestlé do not see many barriers to having meaningful dialogue with FSANZ in progressing an Application. The most significant barriers that we face is when substantial costs have been invested into an Application, that does not result in an optimal outcome due to the conservatism of the decision makers that may have contrary views to the FSANZ recommendations.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Nestlé currently uses the self-substantiation approach for low risk ingredients and notified food health relationships for health claims. We also are involved in advocating regulatory change via Applications and Proposals. We would in future, continue to be engaged in this area – even more so if 'enhanced' pathways for Applications are being proposed. If enhanced pathways provide speed and agility, this then leads to less hurdles for innovation and as a positive consequence, this provides an incentive for businesses to engage more with the food regulatory system. We are also keen to better understand minimal checks and the likely proposed scope of regulatory change that may be captured here. We see a potential for engaging this pathway for lower risk activities that help to faciliate innovation and informed communication to consumers.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé see value in a Commonwealth coordination approach by FSANZ, particularly for Australia. However, we also would see the health jurisdictions still playing a key role 'on the ground' to manage the issue.
Additionally, we agree if the proposal that FSANZ acts as the 'intelligence engine' of food safety goes ahead, that FSANZ will have a better handle on emerging risks that will play a useful role in coordinating a food safety response together with the jurisdictions.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Nestlé has no comments to provide in this area.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

Nestlé considers this proposal more relevant for Australia, where the response currently is quite fragmented given the number of states. As opposed to New Zealand, that has one single response currently.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé generally supports improving regulatory clarity and guidelines help in this respect to provide interpretative guidance. However, we believe that the advice provided should not be legally binding in nature. We provide specific comments on the following:
• Including a statement of intent alongside food standards in the Food Standards Code
Any inclusion in the Food Standards Code is potentially legally binding. If this is the case, Nestlé does not support including a statement of intent in the FSC, noting that such guidance that may provide a legally binding effect does not exist in other key international jurisdictions. Alternatively, Nestlé supports a FSANZ advisory service that is not legally binding.
• Resourcing FSANZ to update and maintain industry guidelines
The support to this question in relation to who updates and maintains industry guidelines really depends on who has final accountability for enforcing the food standards code. If FSANZ has a future role in enforcement, then we support FSANZ being the respons ble entity to provide these guidelines. If, however, per the current status quo, the jurisdictions have statutory responsibility for implementation, interpretation, and enforcement, we believe they should have the responsibility for developing guidance (such as what was previously done with the FSC 1.2.7 guidance). This does not restrict FSANZ from having any input into the guidance regarding regulatory intent and interpretation. Therefore, if enforcement remains with the jurisdictions, Nestlé suggests that the Implementation Sub-Committee on Food Regulation (ISFR) is tasked with engaging with FSANZ and preparing implementation guidelines concurrently with FSANZ standards development processes. Guidelines developed in this way should be adopted by all jurisdictions and should be made available to the broad community.
Lastly, Nestlé does not support the proposal to introduce a power for FSANZ to make binding interpretations about food standards. If the regulation is not clear in the first place, it should be addressed by correcting the legally enforceable instrument (the Food Standards Code), rather than have separate interpretive advice that is legally binding and is not located in the same place as the actual regulation.

• Resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims.

Nestlé provides qualified support in this area. We agree with the potential benefits in having notified claims underpinned by robust substantiation. At the same time given the ambitious reform being proposed by the modernisation of the food regulatory system, we would not wish to see this as a priority for FSANZ and diluting efforts in other areas.
Another alternative is to require all parties (e.g., industry or recognised 3rd party providers), prior to preparing GLHC dossiers, to demonstrate competence to undertake 'self-substantiation' activities. This mirrors food safety regulation, as competence in food safety is assured through a structured food safety plan approval and 3rd party audit scheme. As it stands today, industry has the responsibility to substantiate claims not already recognised in the GLHC Schedule. If industry does not have the science capability to prepare self-substantiation dossiers, a 3rd party provider can be engaged.
Lastly, we support a cost recovery model for this area.

• Providing for a determination of what is not a food.

Nestlé does not support the addition of a provision within the FSANZ ACT to interpret what constitutes a therapeutic good. Therapeutic good is already defined in the FSANZ Act by way of reference to the Therapeutic Goods Act. Adding an additional definition of therapeutic good in the FSANZ Act is not l kely to help in define the food – therapeutic good interface. Nestlé would support cooperation between FSANZ and TGA to work together to improve guidance material on the food medicine interface and to co-operate in investigating complaints about products that sit in the food / medicine interface as it can be overly complex.

• Providing for a broader basis for interpretation of what constitutes a therapeutic good.
Nestlé is not opposed to the ministerial power to determine that a product is a food being broadened to also be able to determine that a product is not a food. This should only be used in situations where it is needed to provide clear regulation in instances where it is necessary to define what is and is not a food in addition to determinations that can already be made. For example, if a product is already determined to be a therapeutic good, then there may not need to be a separate determination that it is not a food.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Nestlé does not have any current data to share. Pre Covid we had experienced situations where significant delays in reviewing complaints or challenges raised with a Jurisdiction in regard to competitor communication and claims. These issues were often not resolved or closed out in a timely manner. When the concern was actually finalised the Business using the non-substantiated claims or communication were often given very long lead times to comply to address the error rather than next label run or immediate label update and implementation. This did not always feel equitable to us. The offending Business may have been small to medium sized but the rules for compliance remain the same no matter the size of your Business.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

The enforcement of the ANZFSC is carried out very effectively in New Zealand by the MPI. Therefore potentially not something that would be required in New Zealand. In contrast if FSANZ is responsible for enforcement in Australia for food labelling and the food composition standards a substantial reduction in regulatory uncertainty would result and potentially significant improvements. Nestlé would welcome and support FSANZ taking respons bility for this role.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

Nestlé supports FSANZ taking on an enforcement role across chapter 1 and 2 of the ANZFSC. This however may apply to Australia only as indicated in the previous question above enforcement is considered effective in New Zealand as part of the respons bilities within New Zealand MPI. With FSANZ taking on this responsibility the interpretative guidance and outcomes would be optimised and enhanced potentially creating a level playing field across the food industry.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Nestlé has no comments to provide in this area.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Nestlé supports the concept of greater influence internationally and sees great potential in shared risk assessments, Standards and potential harmonisation across many areas of food regulation and safety. Nestlé agrees that this could facilitate better and stronger Trade arrangements which will benefit Australia and New Zealand. Nestlé considers however that Australia and New Zealand should remain independent in terms of positions and influence internationally as 2 voices or votes will always be better than one. Nestlé supports FSANZ in the pursuit of greater broader coordination of international relations and contributions.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

There would be substantial costs involved in establishing a bilateral enforcement function for FSANZ. Nestlé is of the view that the costs for a trans-Tasman enforcement would likely be prohibitive and are unnecessary.
Nestlé does not support Option 3 in its entirety however we do support some of the components.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Nestlé supports cost recovery for regulatory change and representations that are initiated by industry. Within Option 3 Component 2 there is a proposal for Resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims. In this area we certainly support cost recovery. This also makes it more fair and equitable for businesses that have alternatively chosen to outsource and pay for consultancy services of people with demonstrated competency in substantiating food-health relationships. Additionally, this also ensures that public health funds are appropriately allocated to key priorities of FSANZ that support their core activities.
Nestlé does not support cost recovery for other activities or functions within Option 3 such as enforcement activities.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The RIS has been thoroughly thought out and the Policy problems already identified are quite broad, covering many components and we consider that these are ambitious plans needing focus and attention without need for dilution. Therefore, we consider there are no other key policy problems that should be considered at present as part of this regulatory impact analysis.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Nestlé supports Option 2 overall – We also support in general components 1 through to 6 though we have indicated concerns or questions regarding some specific aspects within the specific components.
The highest priority for Nestlé is the following reform Option and component.
OPTION 2. Component 2: Facilitate risk-based approaches to developing or amending food regulatory measures -> The creation of new pathways could expedite low-risk amendments to food standards
This area has the greatest implications on innovation and trade. The current system is sub-optimal and presents a number of regulatory risks, cost and time burden in advancing applications for new ingredients. The current system acts as potential barriers to innovation and we would welcome a focus on change in this area for 'enhanced' pathways that facilitates speed and agility, reduces cost and time burden, and yet does not compromise on safety.
Nestlé also supports Option 3 – We also support in general aspects of the components presented. We have indicated throughout our comments, qualifications or questions.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Nestlé considers that the reform options presented are relatively aligned with the draft Aspirations for the food regulatory system. The food regulatory system should focus primarily on food as eaten and its impact on nutrition and health of the population. Nestlé considers that there are other regulatory Departments and frameworks that could better manage issues of community and environmental concern like sustainability, environmental management and animal welfare. So whilst the platform of 'clean, green, healthy and safe products' with key elements being a greener industry and supply chain is welcomed and a direction the food industry is already investing in it is considered that the responsibility for this is with other Government Departments and not necessarily a consideration or platform for FSANZ.
Nestlé considers however that if many of the elements proposed within the RIS are implemented then our food regulatory system will be hopefully more agile, flexible and will reflect a modern regulatory framework which will ensure FSANZ cred bility and reputation remain strong and relevant into the future.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Just a note that only 3 responses (to Q6, 10 & 20) were confidential. The rest are not. In the first set of questions there was no an option to direct how confidential responses are to be submitted.

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-17 21:27:11**

About you

What is your name?

Name:
Deon Mahoney

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Produce Marketing Association Australia New Zealand

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

PMA Australia-New Zealand Limited (PMA A-NZ) is the first stand-alone global affiliate of the Produce Marketing Association (PMA Global) - the leading global fresh produce trade association serving member companies around the world and every segment of the fresh fruit, vegetable, and floral supply chain.

By working across the whole supply chain, PMA A-NZ strives to assist businesses to increase their sales of fresh and safe produce to regional and global consumers and develop their internal business capabilities through motivated and skilled employees.

Our Community
PMA members are buyers and sellers from every segment of the fresh produce and floral supply chain. Our global community includes seed companies, growers, packers, processors, shippers, importers and exporters, wholesalers and retailers, foodservice, government agencies, associated suppliers to the industry, and many more.

Our Vision
Bringing together the global produce and floral community to grow a healthier world.

Our Mission
To connect, inform and deliver industry solutions that enhance members' prosperity.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Clarifying the definition of the term public health and safety (PH&S) in the FSANZ Act would assist in clearly establishing the role and the strategic direction for FSANZ. This should articulate PH&S as encompassing fit for purpose, safeguarding the safety and quality of the food supply, whilst supporting innovation and not creating barriers to trade.

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.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Inputs such as the use of manures and soil amendments improve food sustainability in the horticulture sector, they may impact food safety. Similarly, efforts to reduce packaging or use recycled materials need to be examined from a food safety and suitability perspective.

A further issue is the extend to which climate change is impacting the sustainability of Australian agriculture and the potential for greater risks to human health through pathogens e.g. algal blooms, animals being stressed.

But the principal role of FSANZ should be in reducing risks related to food and not addressing sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The principal role of FSANZ should be in reducing food safety risks and enabling consumers to make informed choices.

Where new foods enter trade, they should be assessed to establish their safety, which may include an assessment as novel foods. There are many examples of where traditional and or indigenous foods consumed in some cultures are banned under the Code (e.g. puffer fish, hemlock), or come with warnings (e.g. guarana, royal jelly). For this reason, we don't support recognition of indigenous food expertise, rather it must be considered through a risk-based lens, thereby ensuring safety and suitability.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

PMA A-NZ believes the Australian food industry has a variable understanding of the role and remit of FSANZ, and its responsibility for the Australia New Zealand Food Standards Code.

Since the inception of the FSANZ Act, FSANZ has largely delivered good public health and trade outcomes, supporting the food industry's competitive edge and its reputation for producing safe food.

However, PMA A-NZ does not support this option as there are opportunities to revise the Act so it remains fit-for-purpose and appropriately future-focused. The ability to create a more agile standard-setting process, that proportionately focuses on risk, and encourages innovation is highly desirable.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The main concern is the sluggishness of the standard setting process, particularly ongoing delays with the application process to seek variations to existing standards.

Greater recognition of international standard setting processes (CODEX, European Union, and the United States) could facilitate faster approval processes. There is also an opportunity to revamp the way low-risk applications are handled and ratified, and to enhance harmonization of the way the Code is enforced across jurisdictions.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

No comment

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Many low-risk applications for amendments (e.g. processing aids, MRLs) to the Code could be handled in a more timely and cost effective manner. Including a revision to the Board approval process, and the requirement for Food Ministers to approve low-risk amendments.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

No comment

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ supports clarifying and reinforcing the objectives and functions of FSANZ as outlined in the current FSANZ Act. The goal of modernising the Act should be to strengthen the existing data-driven, intelligence led decision-making process, and to enhance the level of engagement and integration between stakeholders within the food regulatory system.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

PMA A-NZ believes that health and economic impacts must be considered ahead of sustainability. The principal role of FSANZ should be in reducing risks related to food and enabling consumers to make informed choices.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

FSANZ is responsible for protecting public health and safety - sustainability is not a consideration in risk assessments but may come into consideration when proposing risk management options after a full and comprehensive regulatory impact assessment.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

FSANZ is responsible for protecting public health and safety.

PMA A-NZ is unable to see the merit of recognising indigenous culture and food expertise as an element of risk-based standard setting and the regulation of food.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No comment

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ supports the ongoing application of science-based and risk-based assessments and associated risk management decision making as described in the Regulatory Science Strategy.

There is an opportunity to pay greater heed to international assessments, provided they are credible, with the caveat that exposure assessment reflecting Australian and New Zealand dietary exposure and industry practices is considered.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

PMA A-NZ supports delegating decision making to the FSANZ Board for low-risk applications.

There is an opportunity to expedite low-risk amendments to the Code in circumstances where the risk to public health and safety is considered to be low. Some form of ranking of applications could identify low versus higher risk applications. Further, the process of amending the Code could be improved with the FSANZ Board responsible for final approval of low-risk applications (via a delegation from the Food Ministers).

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

PMA A-NZ supports FSANZ taking a greater role in providing Guidance documents and Codes of Practice to support the implementation of Standards in the Code.

Such non-regulatory measures have the advantage of supporting consistent interpretation and implementation across jurisdictions. As they are not enforceable, they should be seen as guidance for meeting the requirements outlined in Standards.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

No comment

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ supports greater flexibility with the introduction of new technologies and products.

The concept of a regulatory sandbox is absurd and would undermine the professionalism and respect for FSANZ.

Instead, there is a need to consider Provisional approvals or Temporary authorisations, on a case-by-case basis, for a finite period, for low-risk products and processes. Currently many new products go through an extensive and often expensive FSANZ application process before release to the market, and then they fail – at significant cost to the processor.

Such an approach facilitates proof of new product concepts of food ingredients and enable more data to be generated for a subsequent application for permission.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

New horticultural products/species
New processing aids and ingredients

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

PMA A-NZ assumes that FSANZ already employs the best available information and science in its assessments and uses that intelligence to drive forward-looking standards.

FSANZ must continue to retain its food safety databases and food composition information and this information should be employed to undertake more timely regular reviews of food standards.

PMA A-NZ does not support FSANZ undertaking a coordination role for food safety research. We do however support a national oversight and strategic guidance on food research, with FSANZ input into this process, as one of many stakeholders in food safety research.

In terms of consumer facing guidance, the existence of communication materials as a form of risk management is already established within FSANZ e.g. Listeria brochures. The efficacy of these risk communication tools should be assessed, and if FSANZ was to take a greater role in this area, then the cost and risk communicator expertise implications need to be considered.

Currently the State and Territory regulators and Health Departments generate a significant body of consumer-facing food safety educational content.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Neutral

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ sees advantages in FSANZ working more closely with other agencies both within Australia and New Zealand and internationally. FSANZ could also engage more with the food industry – at a peak industry body level – to facilitate greater dialogue and understand of the role of FSANZ and appreciation of the goals and challenges faced by industry.

The recommendation that FSANZ could partner with government stakeholders to make intelligence-led decisions and reduce duplication of efforts is supported, although the advice through FRSC is often detached from commercial realities, real-world scenarios, and often lacks knowledge of technical issues and challenges faced by the food industry.

There would also be advantage in FSANZ periodically engaging in the Food Ministers' meeting – supporting joint agenda-setting and the prioritisation of Proposals. This would ensure FSANZ has a focus on matters related to its core business of public health and safety.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

No comment

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ supports a review of governance arrangements – including examining the size and composition of the Board, streamlining and timely appointment processes for Board members (avoid having acting positions), and consideration of approval processes.

Utilising technological solutions (such as Board pads) and having periodic virtual meetings could also result in efficiencies.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

PMA A-NZ does not support increased scope for cost recovery. Many sectors of the food industry find the existing Application costs prohibitive.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

PMA A-NZ believes SMEs would find the impact of cost recovery prohibitive.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

PMA A-NZ represents members across the fresh produce/horticulture sector – as such our involvement with the food regulatory system is through the provision of advice and guidance to our members and commenting on Applications and Proposal where relevant.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Delays in the Standard setting process.
Time required to respond to Assessment reports is often very short.
Inability to provide data to support risk assessments.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

PMA A-NZ would engage more if the system was more flexible and less prescriptive. This includes pathways that expedite adoption of overseas standards and industry self-substantiation pathways for low-risk products, such as food additives that are similar to other products already covered by standards.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The current process for oversight of recalls and withdrawals is working effectively.

Coordination of food incidents could be enhanced with greater engagement with industry and the retail sector.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No comment

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No comment

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

PMA A-NZ strongly endorses FSANZ providing greater guidance on food standards.

A significant benefit would be more consistent implementation of food standards – the current arrangement with ISFR is ineffective.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

PMA A-NZ does not support FSANZ taking on an enforcement role.

Why? Resources required to undertake any form of role in enforcement. Complexity of working alongside the States and Territories.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

PMA A-NZ believes FSANZ should focus on effectively and efficiently delivering its core business. There is no support for broadening its remit to oversight or enforcement of Standards.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No comment

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

PMA A-NZ believes that FSANZ is already an active player on the international stage through its engagement with CODEX, and its relationships with WHO, FAO, US authorities, etc. Each senior professional within FSANZ should have a network of local and international experts and engage with them on a regular basis.

The existence of these strategic relationships ensures FSANZ is across contemporary issues and has the mutual benefit of supporting international harmonisation processes.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

No comment

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Yes

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

PMA A-NZ supports parts of Option 2, with components 1, 2, 5, and 6 as key priorities.

PMA A-NZ supports a strong, resilient and agile food regulation system that protects public health whilst supporting a competitive and profitable food industry. Key elements of the review that are worthy of more detailed consideration are:

• Streamlining processes for developing or varying food standards
• Undertaking regular reviews of existing standards to ensure they remain fit-for-purpose
• Exploring the introducing of new foods/ingredients to the market via alternate mechanisms
• Explore the capacity to delegate decision-making for low risk, technical amendments to the Code to FSANZ
• Utilise international standards and risk assessments when combined with Australian and New Zealand exposure assessments
• Provide support to industry in the interpretation of Standards in the form of guidelines and codes of practice
• Explore feasibility of a greater role in risk communication through education and information campaigns to assist with fuller consideration of potential non-regulatory risk management options, rather than a regulatory (standards setting approach).

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

PMA A-NZ considers that the options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System.

PMA A-NZ supports Option 2 as it supports continuous improvement; if implemented effectively will results in responsive and transparent decision-making processes ; and will lead to more proportionate and effective responses to policy and compliance issues.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 09:12:03**

About you

What is your name?

Name:
Chris Andrew

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Indigenous traditional agriculture

What is your organisation?

Organisation:
Black Duck Foods Ltd

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
Yuin

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Indigenous social enterprise operating on Yuin Country

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

N/A

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

N/A

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Current food regulatory system openly discriminates against Indigenous culture and food expertise in Australia. This has manifested itself in Indigenous Australian's participating in less than 1% revenue from traditional foods. Moreover, the health impact of cultural theft on Indigenous peoples, including their traditional food stories, has caused intergenerational trauma which is not considered in the food regulatory system.

The disconnect between Indigenous culture, including notions of Country, and the Indigenous food sector has allowed and facilitated misrepresentation of these foods and accelerated the theft of knowledge from Indigenous Australians.

Despite over 65,000 years of food history, Indigenous traditional foods are labelled "novel". Moreover, the onus of proof on food must be presented based on written colonial records rather than Indigenous oral stories.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Retaining the status quo will ensure Indigenous Australians continued to be racial discriminated in the food system. This will continue to contribute to the growing inequity and disadvantage inflicetd on Indigenous Australians.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Federal & State Government's already carry the burden of cost imposed by perpetuating disadvantage across Indigenous Australians and preventing fair and equitable participation in the economy.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The Indigenous traditional foods already bares the risks of 250 years of colonisation, including wilful damage of Country, theft of knowledge, denial of history and disposition of knowledge.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

By any definition, sustainability of Indigenous food systems must operate within a cultural framework, where food is linked to a cultural licence.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Increased Indigenous food systems can yield substantial regional economic growth opportunities

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Indigenous food systems must be linked to Country, linked to people & linked to story. Indigenous foods must only be produced with a cultural licence to do so.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

At present, Indigenous Australians receive less than 1% of traditional foods revenue - yet they have 100% the story of that food. Economic opportunities exist throughout the food sector - from the farm to the accountant.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Indigenous agriculure would benefit

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Yes

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Indigenous foods need to be moved out of novel

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

Within Australia, FSANZ would be well placed to enforce cultural licence linked to Indigenous traditional foods

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Focus on Indigenous traditional foods is welcome

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Improving equity in Indigenous traditional foods is a major priority for Australia.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

N/A

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

N/a

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 09:59:37**

About you

What is your name?

Name:
Dylan Firth

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Brewers Association of New Zealand

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The Brewers Association believes that the FSANZ Act should be considered in the context of the food regulatory system as a whole. The current approach of conducting parallel reviews of different aspects of the food regulatory system risks missing the important challenges that arise from the interrelations between the statutory and non-statutory parts of the system – i.e. FSANZ, the Forum and FRSC. The Review of COAG Councils and Ministerial Forums has not been addressed in the FSANZ scoping paper, and there is some degree of divergence between the recommendations of the two papers. The FSANZ scoping paper needs to take this into account in light of the COAG recommendations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The Brewers Association has some concern about the expansion of objectives in food sustainability as it would add substantial cost burden to businesses with the potential of having to assess. “agricultural practices, food processing, distribution, packaging, and other activities in the food supply […] on climate change, biodiversity, soils and waterways… [including] levels of greenhouse gas emissions from livestock, inappropriate aquaculture practices and excessive plastic packaging.” . Furthermore this would likely duplicate areas of purview of existing agencies such as MPI, The Brewers Association notes that the review found FSANZ having issues with resourcing to meets its core purpose and expansion beyond areas of food safety would significantly exacerbate these issues. It is also not an appropriate subject for Trans-Tasman regulation since the priorities for sustainability will differ greatly between New Zealand and Australia.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

n/a

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Status quo option's benefits would very much depend on what is applied from the components provided, because there are some improvements needed on the current system as outlined in the DRIS. But compared to the options provided there is possibility of further negative interventions within the options. Therefore a status quo option may provide on balance with the options provided a neutral outcome. The vast expansion of the FSANZ remit is concerning because it moves away from a food safety system and management of the processes to enable development of new products and innovation to a strong focus on expanded public health function (which in New Zealand is the role of the Ministry of Health), Sustainability in food production, which is very much an MPI role and enforcement (again an MPI function in NZ)

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

n/a

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

n/a

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

It is the concern of the Brewers Association that there has been little consideration on calculation of timeframes or cost for industry in preparing applications, or in implementing changes. When throught the RIS there is focus on improving efficiency for the bureaucracy there is consideration of statutory process for creating and varying food regulatory measures via applications and proposals, and calculates the impact this has on FSANZ to process them. But little focus on how this affects businesses.
While there are some welcome proposals around fast-tracking low risk changes, there has not been consideration of procedural improvements to major changes.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

n/a

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Within the status quo there are issues around the disjointedness of decisions being guided through the Ministerial Meeting and FRSC. The application of policy directed from FRSC to Minister then through the Proposal process can often end up in long, costly and difficult processes for stakeholders which has long term implications. This is why we support some components of the options provided but not them as a whole. It is important to note that BANZ is unable to fully support any one option until a more formed RIS is provided for consideration.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

n/a

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The object of the FSANZ Act is not “public health” per se but “public health protection”. Therefore, introducing a definition of “public health” would not be a clarification but an expansion of FSANZ’s statutory role.
The Brewers Association’s view is that the food regulatory system is not well suited to addressing wider public health and nutrition issues beyond public health protection. For FSANZ to have a greater role in addressing wider public health and nutrition issues would result in unnecessary and costly duplication of regulatory resources. This is not to say that wider public health and nutrition issues are not important; they are clearly of vital importance. But the food regulatory system is not the best vehicle for progressing such objectives.
As above, longer-term public health and nutrition issues are fundamentally social issues. They require a multi-faceted response that draws upon a wide range of regulatory and non-regulatory tools. They require complex decision-making that demands a careful weighing of social and economic factors. In many respects, they are political decisions as much as they are policy decisions. FSANZ and the food regulatory system are not designed to make such decisions, and this cannot be changed simply by expanding the definition of FSANZ’s objectives.
The food regulatory system was designed primarily to create standards pertaining to the identity, composition and safety of foods. It was structured to develop outcomes based on objective evaluation of scientific evidence related to the physical properties of a specific food or food input. This works well when considering discrete scientific issues such as whether to approve a new additive or whether a general level health claim is scientifically justified.
However, when applied to longer-term public health and nutrition issues, the FSANZ process has limitations. The main tools that FSANZ has in its repertoire to address such matters are labelling and product composition. The factors that FSANZ must take into consideration are constrained by the parameters of the Act and do not require a holistic approach to addressing wider public health considerations. The result is a scenario where, as old saying goes, “if you only have a hammer, every problem looks like a nail”.
While FSANZ may be required to take into account whether other measures (available to FSANZ or not) would be more cost■effective than a proposed standard or variation , it is unrealistic to expect that FSANZ could make an adequate assessment of the whole suite of measures outside of its control that are needed to address complex social problems. In practice, FSANZ typically goes no further than weighing up a voluntary form of the proposed measure against a mandatory standard.
FSANZ is also required to consider whether the costs of a particular measure outweigh the direct and indirect benefits to the community, Government or industry. The potential benefits of a proposed public health measure are highly dependent on the relevant social and regulatory context and are generally impossible to disentangle from a variety of confounding effects. Yet the measure must be considered as if there was a specific and quantifiable benefit that can meaningfully weighed against the actual cost of implementation. This is inevitably an artificial exercise.
In short, the nature of the food regulatory system is to strip down proposals for wider public health measures to a binary decision as to whether or not a particular measure meets the narrow parameters of the FSANZ Act. This is not the most suitable context for policies on wider public health matters to be developed. It is also highly duplicative when there are multiple other government and non-government agencies with responsibility in this field.
Progressing measures through the FSANZ system can be high-visibility and create the impression that something is being done about these serious social issues. But food regulatory measures are rarely the most effective approach to such issues and there is a risk of diverting attention from the more challenging and complex policies that are necessary to properly address the problems.

Trade

In the Brewers Association’s view, consistency with import and export markets is an important consideration for the food regulatory system to the extent that it facilitates trade and does not undermine consumer health and safety or result in consumer deception.
The Brewers Association does not agree that consumer choice should be framed as a factor to which FSANZ “must have regard”. This reform proposal could have the effect of considerably broadening section 3. Consumer choice is not an object of the Act in itself; it is a means of achieving the object of “public health protection”. Section 3(c) refers to “the provision of adequate information relating to food to enable consumers to make informed choices”. The information to be provided is “adequate information” – i.e. not unlimited information but only what is sufficient to make an informed choice that relates to the object of the Act.

Board review

The Brewers Association’s view is that there are reasons why the criteria for a review differ from FSANZ’s objectives. The Forum’s role relates to policy rather than to scientific evaluation. While it may be beneficial to have greater clarity or certainty regarding the review process, any change in this area must retain the capacity for the Forum to request a review for the policy reasons in section 3(e)(g) of the Food Regulation Agreement including the likelihood of an unreasonable cost burden on industry and consumers.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The Brewers Association has some concern about the expansion of objectives in food sustainability as it would add substantial cost burden to businesses with the potential of having to assess. “agricultural practices, food processing, distribution, packaging, and other activities in the food supply […] on climate change,

biodiversity, soils and waterways… [including] levels of greenhouse gas emissions from livestock, inappropriate aquaculture practices and excessive plastic packaging". Furthermore, this would likely duplicate areas of purview of existing agencies such as MPI, The Brewers Association notes that the review found FSANZ having issues with resourcing to meets its core purpose and expansion beyond areas of food safety would significantly exacerbate these issues.

The draft RIS notes that food businesses must comply with multiple regulatory schemes, and that there is a web of interconnected agencies that have responsibility for food. The proposal to introduce a new objective around food sustainability into FSANZ's remit will further increase that complexity and increase duplication into the bureaucracy.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

We see this as a potential duplication of work done in sustainability with MPI and that it potentially could increase regulatory costs for industry.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

While there are significant differences in New Zealand and Australia in this area it there could be scope for some reference to the importance of meeting Treaty of Waitangi. However, it is noted that the complexity of applying this lens in a food safety context to 'all' areas of FSANZ operations is one that would require significant resourcing and that for New Zealand alone there is currently little ability for it to be included in every decision framework. How the Treaty is applied therefore may be a wider perspective such as major policy interventions should meet the overarching treaty principles.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

n/a

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Brewers Association supports the idea of redefining processes to develop or vary regulatory measures based on risk. The understanding of risk should be based upon evidence taking into account the objects of the FSANZ Act 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.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The Brewers Association is not opposed to the idea of providing for the Forum to delegate decision-making to FSANZ for more low risk technical amendments, provided that this is solely for matters that do not have a significant policy dimension. If an application or proposal is intended to be the subject of a delegated decision, this should be raised by FSANZ during the consultation stages and stakeholders should have to opportunity to object if they believe that these is a question of policy at stake.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The Brewers Association favors the use of applications and proposals as the primary tool in the food regulation system. While codes of practice and guidelines can be useful, they also risk becoming quasi-regulations but with less rigor in their development than standards. The Brewers Association is generally receptive to the idea of using international standards and risk assessments to reduce cost and delay in the processing of applications and proposals, subject to certain conditions.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The Brewers Association sees no major issue with the costs associated with gathering this evidence however would see it could be through the application or proposal process to reduce the administrative burden to both industry and FSANZ.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

n/a

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Brewers Association is supportive of the inclusion of abilities for the introduction of a "safe space" that creates an environment for businesses to test products with less risk of being "punished" by the regulator for non-compliance. Product development and interpretation of existing code requirements has in the past led to disagreement and ultimately the possibility of further regulation due to perceived non-compliance and a ‘sandbox’ element to the Act would go some way to prevent this occurrence.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

n/a

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The Brewers Association is not opposed to the idea that FSANZ could have a role in relation to the points (food fraud and food crime; centralised repository of information on food safety; coordinating food safety research) since these are more or less an adjunct of FSANZ’s existing capacities. However, such functions would need to be adequately resourced and due consideration should be given to the question of whether they replace or duplicate existing functions in the jurisdictions.

The Brewers Association does not support the idea that FSANZ should take the lead on education campaigns – particularly as they relate to broader public health matters. This is outside of FSANZ’s core competencies and should remain with the jurisdictions where there is a better appreciation of the educational needs of the relevant populations.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

n/a

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Brewers Association 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 Brewers Association would also support the increased availability of FSANZ databank and extending its resource to obtain and maintaining data, building on FSANZ’s infrastructure already in place to better link with other data sources in the system and then scale the insights.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

The Brewers Association agrees in greater availability of data from FSANZ and would be open to the idea of a pay for data arrangement however would urge restrain on using this as a further funding mechanism or revenue generator. With a cost recovery basis preferred to access to data such as aligned with fees seen under official information act requests.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Brewers Association would like to see more representation from industry of the FSANZ Board. From an industry perspective, there is very little visibility or engagement with the Board of FSANZ. The activities of FSANZ have significant impacts on a diverse range of business sectors including: agriculture; food manufacturing; beverage manufacturing; hospitality; and, retail. Each of these business sectors has its own set of interests and concerns. Each sector also has deep expertise in the technical and practical aspects of food regulation as it relates to their activities. However, there are only two guaranteed places for Board members "nominated by organisations, or public bodies, established for purposes relating to the food industry". This is insufficient to capture the range of industry interests.
All boards require a balance and diversity of experience and expertise to function effectively. This is particularly the case for FSANZ as fundamental to its function is to consider differing perspectives and evidence in order to drive balanced, science based outcomes.
In its current form, the Board does not provide a balanced composition of expertise required to be able to undertake FSANZ functions. The FSANZ board makes decisions that materially impact the businesses affected. The board should draw more than two of its twelve members from industry. We believe as a minimum that industry should be represented as follows:
■ two from agriculture;
■ one from food manufacturing;
■ one from beverage manufacturing;
■ one from food retail.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

n/a as per 27

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

n/a as per 27

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

n/a

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The Brewers Association finds this difficult to give a response to this question as it is presented in isolation of context against existing government guidelines for cost recovery. Therefore without those considerations does not believe it is relevant.
The Brewers Association note the exclusion of recommendations of cost recovery mechanisms for industry initiated proposals and that a more targeted review of funding may be required which could include considerations of state governments are needed.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The Brewers Association opposes the expansion of cost recovery arrangements for applications. The current cost recovery regime for expedited applications is already inequitable. Applicants using the expedited process are required to pay the full cost of the application, despite the fact that (with the exception of applications with an exclusive capturable commercial benefit) they do not receive the full benefit of the application or of the expedited process. The high cost of expedited applications is a strong disincentive for businesses to use this process.
These issues would be exacerbated if FSANZ was to extend cost recovery to non-expedited applications. Even more costs would be borne by parties who are not the sole beneficiaries. Only the most well-resourced and motivated businesses would be able to pursue applications. These negative effects would surely outweigh the negligible financial benefit to FSANZ in terms of its overall budget of extending cost recovery.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

n/a

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The Brewers Association does not consider the statutory timeframes for applications to be problematic in themselves. The Brewers Association does, however, note that the application process is both rigid and costly. This disincentivises businesses from using the application process, which in turn inhibits innovation and the availability of newer or more cost effectively products to consumers.

This is mainly due to the rather inflexible approach to the provision of evidence in the Application Handbook which does not differentiate adequately between applications of high and low complexity and does not take sufficient account of international standards or risk assessments. This is compounded in the case of expedited applications, where the entire cost of the application is borne by the applicant regardless of the fact that the applicant does not receive all of the benefit of the application or even of the expedited process.

While this is outside the scope of the present review, the Brewers Association also notes that the processes by which policy guidelines are developed and directions are given to FSANZ by the Forum lack rigor and transparency and are at times difficult to reconcile with the statutory obligations of FSANZ.

A case in point is the recent Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Food Choices. A consultation was released over the 2019 Christmas period without proper notice to stakeholders and without any accompanying policy documents or regulatory impact statement. No assessment of the submissions was made available. Instead, the Policy Guidance was cloaked in secrecy – apparently issued in August 2020 although no Communiqué was issued, and it was not made publicly available until November.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

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 that 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.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

n/a

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

n/a

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Brewers Association supports the idea of FSANZ including a statement of intent alongside food standards when they are developed, since this statement would form part of the consultation process for the standard.
However, when guidelines are used to interpret unclear standards, they can often have a quasi-regulatory effect as producers and sellers fear to step outside those guidelines. However, the role of interpreting legislative instruments properly lies with the government enforcement agencies in the first instance and, ultimately, with the Courts. Interpretation can often have the effect of making policy, for example by making decisions about the application of existing standards to new technologies. The Brewers Association does not consider that this is an appropriate role for FSANZ.
The Brewers Association's view is that it is preferable for standards to be drafted clearly in the first place and, if there are areas where a standard is or has become unclear, this should be resolved through the application or proposal processes

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

n/a

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

See next question

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

The Brewers Association opposes the idea of giving FSANZ enforcement powers. As well diverting resources, this would completely change the nature of FSANZ and disrupt the constitutional arrangements between the Australian Commonwealth the State and Territory jurisdictions and New Zealand that are embedded in the food regulatory system. There is no indication that the problem of inconsistent interpretation is sufficiently severe to justify a change of this magnitude.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

n/a

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Brewers Association has some reservations about extending FSANZ remit to broader international relations. Primarily due to the separate interests bourn by Australia and New Zealand from a trade perspective. The idea of having to align sovereign positions in some areas is unlikely and the Brewers Association sees extending FSANZ activities to international positioning for both countries as hard to reconcile. While FSANZ currently represents Australia's positions to groups such as the Codex Alimentarius Commission, New Zealand is already represented in this forum and often its positions may differ from that of Australia.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

n/a

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

n/a

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

The Brewers Association would note that our comments on the expansion of the definition of Public Health provided the area of most concern and would put greatest emphasis on this area.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The Brewers Association believes that the aspirations document was not in a comparable form to what is presented in the DRIS therefore cannot comment extensively on this matter. The Brewers Association has made substantial comment on the Aspirations document and its concerns about the alignment of timings.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

n/a

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 10:06:42**

About you

What is your name?

Name:
Riki Kotua

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Wakat■ Incorporation

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Ko wai m■tou? Who are we?

1. Wakat■ has an intergenerational 500 year vision - Te Pae Tawhiti (https://www.wakatu.org/te-pae-tawhiti) - which sees us through to 2512. It is a declaration of our fundamental values, common goals and guiding objectives that will ensure our success and create a strong identity now and in the future. At the heart of Te Pae Tawhiti is our overarching purpose which is to preserve and enhance our taonga (treasured resources) for the benefit of current and future generations.

2. Wakat■ grew from $11m asset base in 1977 to a current value of over $300m. Whenua is the foundation of our business with 70% of assets held in whenua (land) and waterspace. We manage a diverse portfolio from vineyards, orchards to residential properties, large retail developments, office buildings, marine farms and waterspace. Wakat■ owns, on behalf of its 4,000 shareholders, both M■ori land and General land.

3. Kono is our food and beverage business focused on high quality beverages, fruit bars, seafood products, pipfruit and hops. We understand that innovation and adaptability is the key to our success.

4. Auora is the strategic arm of our organisation, which is focused on innovation, particularly in the development of new high-value ingredients and functional food products and new business and service models. Two wide-ranging and ambitious AuOra work programmes of relevance to this submission are: 1) our Te Tauihu Indigenous Organisms Programme, which is designed to progress i) new models and frameworks to support the connection of our wh■nau (families) to their whenua (land) and promote best practice in the protection and conservation of our indigenous organisms, and ii) a biodiscovery platform utilising indigenous flora and fauna and associated customary knowledge; and 2) our High-Value Industry Pathway Programme, which seeks to establish a streamlined pathway for the development of new high-value industries that will facilitate M■ori and New Zealand businesses, including SMEs, to engage effectively with science, technology, and innovation.

5. Our wh■nau and our businesses are located primarily in our traditional rohe (territory), Te Tauihu – the top of the South Island.

6. As wh■nau (families) who have mana whenua (authority over land) and mana moana (authority over water) in our area, we have rights to use and access the land and water and associated resources within our rohe. We also have intergenerational responsibilities to protect the physical and spiritual components of our

land and water. We are always mindful of the need to look after our resources for the benefit of current and future generations. As kaitiaki (custodians), we adhere to certain practices and protocols that were established by our t■puna (ancestors) when using land and resources. These practices ensure that the physical and spiritual aspects of life are kept in balance.

7. Wakat■ has a number of work-programmes underway focused on ensuring that we whakatinana (embody) our kaitiaki values and responsibilities, these include our Whenua Ora (Healthy Land) and Tangata Ora (Healthy People) programmes. Wakat■ is committed to showing leadership in these matters to achieve transformative change for our taiao (environment) and our wh■nau.

8. In short, our purpose is to preserve and enhance our taonga, for the benefit of current and future generations. Our submission on the Scoping Paper is made with that at the forefront of our minds.

A brief customary history of the Nelson and Tasman District

1. In the 1820s and 1830s, mana whenua then living in Te Tau Ihu were conquered by tribes from the North Island, including Ng■ti R■rua, Ng■ti Awa (now known as Te ■tiawa), Ng■ti Tama and Ng■ti K■ata. This tribal grouping is known as Ng■ T■ngata Heke – the people of the Heke. The Heke were the series of migrations back and forth from the north to the south, including to Te Tau Ihu, in the early 19th century from the K■whia and Taranaki coasts. These migrations are remembered in the collective memory of the people as a series of named Heke.

2. By 1830, it was established that the hap■ who held M■ori customary title or mana whenua in Nelson, Tasman Bay and Golden Bay were the descendants of the four Tainui-Taranaki iwi of Ng■ti Koata, Ng■ti R■rua, Ng■ti Tama and Te ■tiawa.

3. The four Tainui-Taranaki iwi in western Te Tau Ihu are recognised as the mana whenua on the basis of acquiring M■ori customary title through a combination of take (raupatu (conquest) and tuku (gift)) and ahi k■ roa (keeping the fires alight, by occupation or in other recognised ways). Over time, the whakapapa of the migrant iwi from the north became, as the Waitangi Tribunal has put it, ‘embedded in the whenua through intermarriage with the defeated peoples, the burial of placenta (whenua) and the dead, residence, and the development of spiritual links.’

4. From the time of the heke onwards, M■ori customary title manifested itself in western Te Tau Ihu (Nelson, Tasman Bay and Golden Bay) as an exclusive right to land, with the power to exclude others if necessary, with the ability to dictate how land and resources was used and accessed.

5. Ng■ti R■rua, Te ■tiawa, Ng■ti Tama and Ng■ti Koata did not move to Te Tau Ihu en masse, but particular wh■nau and hap■, or sections of particular wh■nau and hap■, from those iwi settled in a staged series of migrations, with land allocated in various locations as different groups arrived.

6. The pattern of mana whenua in Te Tau Ihu was dictated by the pattern of settlement, in which each k■inga (village) was established around a chief or chiefs and each k■inga was home to extended wh■nau, with most residents at each k■inga related by blood or marriage. The wh■nau or hap■ (an extended wh■nau or cluster of wh■nau could equally be described as a hap■) tended to establish themselves at locations where their neighbouring communities were relatives and/or close allies.

7. By 1840, wh■nau or hap■ belonging to the four Tainui Taranaki iwi were established in Nelson, Tasman Bay and Golden Bay as the mana whenua.

The arrival of the New Zealand Company

8. When the New Zealand Company (“NZ Company”) arrived in the South Island in 1841, rangatira [tribal leaders] representing the families of those wh■nau or hap■ who held mana whenua and who were resident in western Te Tau Ihu negotiated with Captain Arthur Wakefield of the NZ Company and agreed to welcome European settlement in parts of the Nelson, Motueka and Golden Bay area.

9. One of the main reasons for this agreement, from the M■ori perspective, was to promote trade relationships between European settlers and M■ori for mutual benefit, bearing in mind that tribes of Te Tau Ihu had already had several decades of contact with European traders prior to 1841.

10. According to the arrangements a major benefit promised by the NZ Company when it entered into what it called ‘Deeds of Purchase’, was that the resident M■ori and their families who held mana whenua in the relevant parts of western Te Tau Ihu (Nelson, Motueka and Golden Bay), would be entitled to retain all existing M■ori settlements, including urupa, w■hi tapu and cultivated land, and in addition reserves would be set aside comprising one-tenth of the land purchased. These additional land reserves became known as the Nelson Tenths Reserves (“Tenths Reserves”).

11. As a result of the negotiations between the NZ Company and t■ngata whenua, the Crown issued a grant in 1845 which extinguished M■ori aboriginal (or customary) title over 151,000 acres in Nelson and Tasman (the Nelson settlement). The 1845 Crown Grant excluded all existing M■ori settlements, including urupa, w■hi tapu and cultivated land, along with one-tenth of the total area of land acquired for European settlement (15,000 acres).

12. The Crown intended to hold the Tenths Reserves on trust on behalf of and for the benefit of the t■ngata whenua who were those families who held M■ori customary title to the 151,000 acres in the 1840s.

13. Despite the guarantees and the provisions stipulated in the 1845 Crown Grant, the Crown failed to reserve a full one-tenth of land or exclude settlements, urupa, w■hi tapu and cultivated land from European settlement.

14. On completion, the NZ Company’s Nelson Settlement comprised approximately 172,000 acres, although it is likely a much larger area of approximately 460,000 acres was eventually acquired by the Crown.

15. As at 1850, the Nelson Tenths Reserves comprised only 3,953 acres (this figure does not include the designated Occupation Reserves).

16. Between 1841 and 1881, Crown officials administered the Tenths Reserves and the occupation reserves on behalf of the original owners. From 1882, the

Public Trustee administered the estate.

Identifying the original land owners

17. In 1892 – 1893, the Native Land Court undertook an inquiry to ascertain who owned the land in Nelson, Tasman Bay and Golden Bay prior to the transaction with the New Zealand Company. The reason for this inquiry was to determine the correct beneficiaries of the Tenths Reserves trust.

18. The Native Land Court Judge (Judge Alexander MacKay) considered that the “New Zealand Company Tenths” (as he called them) had been set aside in accordance with the NZ Company’s stipulation in the Kapiti Deed that it would hold a portion of the land on trust, and accordingly he decided that to ascertain those persons with a beneficial interest “it was necessary to carry back the inquiry to the date the land comprised in the original Nelson Settlement was acquired by the Company”.

19. The Court’s ruling determined the ownership of the 151,000 acres “at the time of the Sale to the New Zealand Company”, with the ownership of the four hap■ – Ng■ti Koata, Ng■ti Tama, Ng■ti R■rua and Ng■ti Awa - broken down according to each of the areas awarded by Commissioner Spain in 1845 (Nelson district, 11,000 acres; Waimea district, 38,000 acres; Moutere and Motueka district, 57,000 acres, and Massacre Bay, 45,000 acres).

20. The Judge’s ruling included a determination:

That although the Reserves made by the Company were situated in certain localities the fund accruing thereon was a general one in which all the hapus who owned the territory comprised within the Nelson Settlement had an interest proportionate to the extent of land to which they were entitled, at the time of the Sale to the Company.

21. The Court requested each of the hap■ so entitled to provide lists of the persons who were the original owners of the land at the time of the New Zealand Company’s arrival and their successors.

22. Importantly, therefore, the 1893 lists were not drawn up by the Native Land Court, but by the people. The evidence of how this was done is consistent with a tikanga M■ori style process where the lists were debated and revised until consensus is reached.

The Crown’s management of the land

23. From 1842 until 1977, when the original owners regained control of their lands, the Crown held the Tenths Reserves and occupation reserves in trust and managed it on behalf of its owners.

24. From 1882 onwards, the Public Trustee, Native Trustee and M■ori Trustee administered the Tenths Reserves and occupation reserves on behalf of the original owners and their descendants. During this period, a great deal of land was either sold or taken under public works legislation - in many cases without the owners’ consent and without compensation for the loss.

25. A clear example of the Crown’s mismanagement during this period is illustrated by the imposition of perpetual leases on the Tenths Reserves and occupation reserves. By way of legislation, the Crown imposed perpetual leases on the land, which for example, allowed for 21-year rent review periods, rents below market value, and perpetual rights of renewal for lessees. In practice this meant the M■ori owners could not access or use their land, nor did they receive adequate rent for leasing the land. The problems associated with the perpetual lease regime continue to impact adversely on the submitters’ land, despite some legislative changes in 1997.

26. In the period to 1977, as a result of the Crown’s mismanagement, the Tenths Reserves estate was reduced to 1,626 acres.

Proprietors of Wakat■ (Wakat■ Incorporation)

27. By the 1970s, the descendants of the original owners were lobbying for the return of their land to their control and management. This led to a Commission of Inquiry (the Sheehan Commission) into M■ori Reserved Lands.

28. Our establishment was the result of recommendations made by the Sheehan Commission of Inquiry that the Tenths Reserves should be returned to the direct ownership and control of M■ori. This recommendation was implemented by the Wakat■ Incorporation Order 1977, which according to its explanatory note constituted “the proprietors of the land commonly known as the Nelson-Motueka and South Island Tenths”.

29. The land vested in Wakat■ Incorporation comprised the remnants of the Tenths Reserves and occupation reserves and the beneficial owners of the land were allocated shares in the same proportion as the value of their beneficial interests in the land transferred.

30. With a few exceptions, those beneficial owners were the descendants of the 254 t■puna identified as beneficial owners by the Native Land Court in 1893. Wakat■ can therefore trace the genesis of a large portion of the land in its estate back to the initial selection of the Tenths Reserves in 1842.

Wakat■ Incorporation today

31. Wakat■ is the kaitiaki and legal trustee of the remnants of the Tenths Reserves and occupation reserves. Wakat■ Incorporation is responsible for the care and development of the owners’ lands.

32. The Incorporation represents approximately 4000 M■ori land owners in Nelson, Tasman Bay and Golden Bay. Apart from the Crown and local authorities, Wakat■ is one of the largest private landowners in the Nelson/Tasman regions.

33. Since 1977, the owners of Wakat■ have built a successful organisation that has contributed to the economic growth of the Tasman District and the economic, social and cultural well-being of the descendants of the original owners.

34. Wakat■ Incorporation's primary focus is based around its management and use of the ancestral lands of the owners for their cultural and economic sustenance. Today, this comprises a mixture of leasehold land, commercial land and development land.

35. Wakat■ has interests in horticulture, viticulture and aquaculture (Kono NZ LP) throughout the Tasman and Nelson District as well as in other parts of New Zealand.

36. The principles and values of Wakat■ Incorporation are reflected in its guiding strategic document – Te Pae T■whiti.

Further information

37. A full history of the lands administered by Wakat■ Incorporation, along with Ng■ti R■rua ■tiawa Iwi Trust, Rore Lands, and other wh■nau and iwi trusts, who own land in the Nelson and Tasman region is set out and discussed more fully in the Waitangi Tribunal, Te Tau Ihu o te Waka a Maui report. Also see www.Wakat■.org.nz for further information.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

As a matter of general principle, engagement with and representation of indigenous stakeholders at all levels of the food safety system (including within governance arrangements) needs to be incorporated, elevated, and enhanced. It is critical also that each sovereign nation is empowered to make its own determinations that accord with the rights of indigenous communities.

In the New Zealand context, the Crown's obligations under Te Tiriti o Waitangi / The Treaty of Waitangi / are paramount. As described in our answer to question 14, the FSANZ Act must have an over-arching Te Tiriti o Waitangi clause. The Crown's commitment to Te Tiriti should also be explicitly referred to in any preamble and / or any principles that are included in the Act. Noting that the FSANZ Act is an Australian piece of legislation, an alternative solution would be for New Zealand to implement a parallel piece of legislation that includes an over-arching Te Tiriti o Waitangi clause. The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty) should also include a Te Tiriti o Waitangi clause.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In the New Zealand context, the Crown's obligations to the Te Tiriti o Waitangi / Treaty of Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasises the role of the public service in supporting the partnership between M■ori perspectives and the Crown under Te Tiriti o Waitangi and the importance of incorporating M■ori perspectives and M■tauranga (M■ori system of knowledge) at all levels. This mandate, by principle, includes any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The current legislated processes for decision-making and amending food standards are inflexible, costly, do not support innovation, and are no longer keeping pace with the rate of change in the overall food environment. These factors are contributing to a stifling of both economic growth and the expansion of the Australian and New Zealand food industry. In contrast, the advantages to be gained by an improved system are significant.

As an example, a more efficient and agile regulatory system, including the provision of consistent guidance regarding how industry could go about demonstrating toxicological and microbiological safety for novel foods, is needed to support industry to capitalise on the global market opportunities for nutraceuticals, including functional foods, beverages and ingredients. In the New Zealand context, according to Coriolis, exports of nutraceuticals increased in value from US$342 million

to US$883 million between 2006 and 2016, making nutraceuticals one of New Zealand's largest and fastest growing F&B export sectors. The worldwide market for functional foods and nutraceuticals is outpacing the traditional processed food market. Grand View Research estimated the global nutraceutical market size to be 382.5 billion US dollars in 2019, with a revenue forecast for 2027 of 722.5 billion US dollars.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
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Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See response to Question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Wakat■ is generally supportive of this component and emphasises again that, in the New Zealand context, the Crown's obligations under Te Tiriti o Waitangi / The Treaty of Waitangi are paramount. To the extent that it accords with the Crown's Te Tiriti o Waitangi Treaty of Waitangi obligations, Wakat■ also strongly advocates that facilitation of trade is added to FSANZ objectives.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

As a M■ori indigenous family business, Wakat■ takes a holistic view of sustainability and considers it to be an issue of critical importance. However, Wakat■ remains to be convinced that FSANZ is the appropriate body or adequately equipped to address issues of sustainability; for FSANZ to have a formal role with respect to sustainability may instead constitute an unnecessary diversion of resources.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

A greater focus on sustainability will generate significant economic and other opportunities for Australian and New Zealand industry from drivers such as consumer demand and expectations, climate change legislation, and robust certification mechanisms. An involvement of FSANZ is not necessary for these opportunities to be realised and instead could generate costs through diverting scarce resources and focus from food safety, public health protection and trade objectives.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing?

Wakat■ is supportive of FSANZ's activities to better recognise indigenous culture and food expertise, however this framing is too narrow.

As a matter of general principle, engagement with and representation of indigenous stakeholders at all levels (including within governance arrangements) needs to be incorporated, elevated, and enhanced. Any changes to the food regulatory system need to accord with international and indigenous treaties, including the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples. It is critical also that each sovereign nation is empowered to make its own determinations that accord with the rights of indigenous communities and (in New Zealand's context) the Treaty of Waitangi.

Recognition of indigenous knowledge approaches is particularly important in the novel foods area. New Zealand and Australia have a high level of biodiversity and many indigenous species have been used by M■ori, Aboriginal, and TSI communities over many generations for multi-purpose health, medicinal and practical applications. There is a critical need to ensure that indigenous expertise and traditional knowledge systems are recognised and incorporated in processes that determine whether bioactive ingredients or novel foods and beverages that incorporate indigenous organisms are categorised as novel/traditional/non-traditional foods.

A number of other matters require attention as part of revising how novel foods are managed and regulated, including the provision of improved guidance on key issues that affect indigenous businesses and communities. For example, the Food Standards Code is vague on the toxicological risk assessment process for novel foods and the level of evidence that would be expected from the regulatory authorities, particularly with respect to indigenous ingredients that are considered to be non-traditional in nature or composition; provision of consistent guidance around how industry could go about demonstrating toxicological and microbiological safety, with consideration of issues specific to indigenous ingredients, would be welcomed and should be developed in collaboration with indigenous experts.

The Food System needs to reduce inequities for small- and medium-sized enterprises (SMEs) and indigenous communities seeking pre-market approval for novel extracts from indigenous organisms. Currently, any party can apply to change the Food Standards Code but the process can take as long as 2 years and the cost of fast-tracking an application is out of reach for many SME / indigenous entities.

More agile, flexible, timely, and responsive processes (if appropriately resourced) would allow for the development of a framework to guide decision making for novel foods assessments involving indigenous organisms and enable access to knowledge from indigenous communities. Recognition of oral histories from expert sources within indigenous communities should be incorporated as part of the assessment process. Where systemic or repeat issues are identified, there is a need for solutions to be progressed robustly at a high level, rather than each industry player having to confront the same roadblocks repeatedly, which achieves ad hoc, workaround solutions at best.

What differences between the Australian context and the New Zealand context are important to consider?

In the New Zealand context, the Crown's obligations to Te Tiriti o Waitangi/ The Treaty of Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasises the role of the public service in supporting the partnership between M■ori and the Crown under Te Tiriti o Waitangi and the importance of incorporating M■ori perspectives and M■tauranga (M■ori system of knowledge) at all levels. This mandate, by principle, includes any trans-tasman programme or regulatory body where the New Zealand government are members and partners.

What changes are required to the FSANZ Act to enable this?

The FSANZ Act must have an over-arching Treaty of Waitangi clause. Our recommendation is for the legal weighting in such a Te Tiriti o Waitangi clause to be the same as section 4 of the Conservation Act which provides: This Act [the Conservation Act 1987] shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

The Crown's commitment to Te Tiriti should also be explicitly referred to in any preamble and / or any principles that are included in the Act.

The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty) should also include a Treaty of Waitangi clause.

Wakat■ reiterates the need for appropriate indigenous representation at all levels of the food regulatory system and recognition of indigenous knowledge approaches.

There is a need to ensure that New Zealand's interests and Te Tiriti o Waitangi obligations are preserved as one of two sovereign nations in this bilateral arrangement (rather than a single voice as one of 10 jurisdictions). This applies equally to the review of the Food Regulation Agreement that is also underway.

As a general principle, there is a need for an outcome-focused (rather than rules-based) novel foods framework, particularly with respect to indigenous flora and fauna. This process should allow flexibility for secondary/tertiary legislation to be amended.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

In a Report commissioned by the Reserve Bank of New Zealand and published in 2020, 'Te ■hanga M■ori 2018: The M■ori Economy 2018', the value of the Ma■ori economy was estimated to be worth almost $70 billion dollars per annum (a significant increase on the previous 2013 estimate of $42.6B), with close to a third of that owned by Ma■ori primary industry collectives. Their report tells a story of a M■ori economy that is increasingly sophisticated and continuing to grow and diversify. In part, this growth is attributed to the large numbers of skilled M■ori moving into entrepreneurship and ownership of small and medium sized enterprises.

A key barrier for economic opportunities for indigenous food and beverages is the difficulty presented by the food regulatory system for approval of indigenous ingredients that are categorised as novel to enter the market. As noted previously, the development of consistent guidance regarding how industry could go about demonstrating toxicological and microbiological safety for novel foods, including indigenous ingredients that are categorised as non-traditional, is needed to support indigenous industry to capitalise on the global market opportunities for nutraceuticals, including functional foods, beverages and ingredients. In the New Zealand context, according to Coriolis, exports of nutraceuticals increased in value from US$342 million to US$883 million between 2006 and 2016, making nutraceuticals one of New Zealand's largest and fastest growing F&B export sectors. The worldwide market for functional foods and nutraceuticals is outpacing the traditional processed food market. Grand View Research estimated the global nutraceutical market size to be 382.5 billion US dollars in 2019, with a revenue forecast for 2027 of 722.5 billion US dollars.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

In principle, Wakat■ is generally supportive of the elements in this component. However there is insufficient detail provided to determine how some of the proposals would operate and emphasises need for stakeholders to comment on the detail of any proposed new measures to ensure that they are relevant and appropriate for the specific Australia and New Zealand contexts.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Wakat■ supports decision-making being delegated to the FSANZ Board, including decisions related to minor adjustments to Standards and technical amendments.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Codes of Practice or Guidelines should be developed in consultation with industry and non-industry agencies (including indigenous agencies) that have expertise in the subject area. Processes related to novel foods and nutritive substances are a good example of where guidelines are needed; as noted above, consistent guidance around how industry could go about demonstrating toxicological and microbiological safety for ingredients that are considered novel would be welcomed.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Wakat■ is generally supportive of this component but more detail is needed to assess this proposal.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Te Anga Whakamua is an example of a programme of work that could contribute products that would be appropriate for regulatory sandboxes. Te Anga Whakamua is a Wakat■-convened, Government supported programme that is developing a high-value industry pathway that will facilitate M■ori and wider New Zealand businesses, including small- and medium-sized enterprises (SMEs), to engage effectively with science, technology, and innovation in the development of high-value bioactive ingredients and functional food products for health and wellbeing that incorporate indigenous organisms. To test the pathway, Wakat■ has developed a functional beverage incorporating an indigenous ingredient of interest (kawakawa) for a key export market. In collaboration with MPI, MBIE, MFAT and wider Government agencies and strategic science partners, Wakat■ is identifying and seeking solutions to the regulatory and other barriers that need to be

resolved in order to streamline the pathway.

As part of Te Anga Whakamua, Wakat■ is also developing a project with the New Zealand Food Safety and Science Research Centre (NZFSSRC) to explore strategies for risk assessment of chemicals in food. The proposed project will review novel non-animal techniques, including scientific and technological advances in in vitro and in silico methods, and propose strategies where these may replace or supplement traditional toxicological information within a tiered approach to food chemical risk assessment, bolstering the ability of risk assessment processes to respond to indigenous world-views and changing consumer values in the use of animal testing to establish food safety. In our increasingly integrated and global food market, consumer demand for non-animal methods of scientific testing will drive rapid changes with respect to food safety testing. The ability of FSANZ to remain abreast of such scientific developments is necessary to bolster the view of FSANZ as a credible, independent, and science-based body.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

More information needed.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Data sovereignty issues are pertinent for questions 24-26. Wakat■ does not consider that FSANZ should be positioned as the guardian of data that relates to New Zealand.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

More information needed.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Wakat■ is generally supportive of this component, provided indigenous stakeholders are represented at all levels of the food safety system, including within governance arrangements.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Wakat■ does not consider that the Act should provide for more of FSANZ's current work with industry to be offset through cost recovery mechanisms, which would have the greatest impact on small to medium and indigenous businesses and entrepreneurs. Wakat■ also does not consider that the provision of interpretative advice should attract fees since this would mean unequal access to the legal system.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Wakat■ considers that cost-recovering from industry for a broader range of activities would exacerbate the existing disparity between large and small to medium businesses, including indigenous businesses and communities, in terms of access to activities.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Wakat■ is actively engaging with the food regulation system in New Zealand as part of Te Anga Whakamua (see our answer to question 22 for details).

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The time, cost and complexity of the application process constitute significant barriers, as does the lack of guidelines regarding how best to demonstrate toxicological and microbiological safety for ingredients, including indigenous ingredients, that are considered novel.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Yes, Wakat■ invests in the development of high-value, functional F&B and indigenous and bioactive ingredient solutions that support consumer health and wellbeing. We would be more likely to engage with the food regulation system if the novel foods pathway is enhanced and streamlined to better service indigenous business needs, and with pathways that expedite low-risk amendments to food standards.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative for New Zealand. Wakat■ is not supportive of FSANZ co-ordinating food incident and food recall responses in New Zealand.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No, FSANZ coordinating food recalls / incident response is not a function that is equally valuable for Australia and New Zealand. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ with respect to New Zealand. Coordination across the different Australian jurisdictions may be of value to Australian industry, however we are not best placed to comment.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Wakat■ is generally supportive of FSANZ being appropriately resourced to give greater guidance on food standards.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

No, FSANZ taking on enforcement activities is not equally valuable for Australia and New Zealand. New Zealand has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in the New Zealand context.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Australia and New Zealand represent two separate countries with differing issues and priorities; in particular, in the New Zealand context, the Crown's obligations under Te Tiriti o Waitangi / are paramount. Both countries need their own voice in international fora (although those voices could be joined in efforts such as trying to achieve harmonisation for mutual recognition of labelling and composition matters). Loss of sovereignty under this proposal is a significant concern.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The key omissions for aligning the Aspirations for the Food Regulatory System with the draft Regulatory Impact Statement relate, in both cases to a) the absence of an emphasis on trade, and b) the lack of an engagement strategy with M■ori and the indigenous peoples of Australia. It is vital that an engagement strategy is urgently developed with M■ori and indigenous parties prior to any further work on the proposed reforms and any future reforms with respect to other food legislation and agreements. This needs to be adequately reflected in updated Review Terms of Reference and equal representation of M■ori and indigenous experts on the FSANZ Act Review Steering Committee.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 10:32:03**

About you

What is your name?

Name:
Matthew Cossey

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Industry Association

What is your organisation?

Organisation:
CropLife Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
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Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Please see attached submission for details

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
CropLife Submission (Combined) Review Food Standards Australia New Zealand Act 1991 DRIS.pdf was uploaded

Matthew Cossey
Chief Executive Officer
[redacted]

Ms Tania Rishniw
Chair - Food Regulation Standing Committee
Australian Government Department of Health
CANBERRA, ACT 2600

Via email: FoodRegulationModernisation@health.gov.au

18 May 2021

Dear Ms Rishniw

Re: Review of the Food Standards Australia New Zealand Act 1991 – Draft Regulatory Impact Statement

As the national peak industry organisation representing the agricultural chemical and plant biotechnology sector in Australia, CropLife Australia provides the attached submission in response to the *Review of the Food Standards Australia New Zealand Act 1991 (FSANZ Act) – Draft Regulatory Impact Statement*.

Crop protection products and crop biotechnology innovations are critical technologies that support the sustainability and productivity of Australia's food production systems and are vital to producing nutritious, healthy, affordable and disease-free food for Australian and overseas consumers. The respective regulatory systems for these technologies present some substantial challenges to the access of safe and effective products by producers, manufacturers and consumers alike, and impede important medical and agricultural research.

Regulatory systems must be clear, proportionate and flexible to respond to scientific advances in a timely manner. They must support regulatory requirements and processes aimed at improving efficiency and effectiveness and remove undue regulatory burden to provide clarity and certainty for the path to market process.

Conducting the review of the FSANZ Act and 'Modernisation of the Food Regulatory System' in a timely manner with consideration of other significant regulatory reform, including the Review of Food Derived Using New Breeding Techniques led by FSANZ and the National Gene Technology Scheme will help to deliver positive outcomes for local and international producers, manufacturers and consumers, as well as position Australia as a global leader in innovation and regulatory standards.

Please do not hesitate to contact me, or have your team contact CropLife's Director of Corporate Affairs, Katherine Delbridge via [redacted] or [redacted], should you require any additional information.

[redacted]

Yours sincerely

[redacted]

Matthew Cossey
Chief Executive Officer

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CropLife Australia

18 May 2021

Review of the Food Standards Australia New Zealand Act 1991 – Draft Regulatory Impact Statement

1. INTRODUCTION

CropLife Australia is the national peak industry organisation representing the agricultural chemical and plant biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of crop protection and agricultural biotechnology products. CropLife's membership is made up of both patent holding and generic Australian and international companies and accordingly, CropLife advocates for policy positions that deliver whole of industry benefit. Our focus is on an Australian agricultural sector that is internationally competitive through globally leading productivity and sustainability achieved through access to the technological innovations of the plant science sector.

In providing a submission regarding the *Review of The Food Standards Australia New Zealand Act 1991 - Draft Regulatory Impact Statement,* CropLife supports the overarching objective of the Review and its constituent projects to modernise and future-proof the food regulatory system.

Substantial regulatory barriers continue to impede investment in research and development and the path to market for critical processes and products from the plant science sector. This limits accessibility and application of these advances at a loss to Australia's agriculture sector and broader society. Appropriate regulations will promote the growth of new industries across agriculture, medicine and the environment, contribute to leading global regulatory standards and the facilitation of production and export of critical technologies and their products, as well as build investor, industry and community confidence.

CropLife supports well-considered reform that maintains a high level of integrity in Australia's biotechnology and agricultural chemical 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. Timeliness in making changes that would improve regulatory certainty and clarity are critically important as the ongoing lack of progress associated with this and related reviews initiated during the past decade continues to hinder innovation and deprive Australian agriculture and consumers of benefits.

The joint Australian Government Department of Health (Department of Health) and New Zealand Ministry for Primary Industries (MPI) initiative regarding the modernisation of the Food Regulatory System (FRS) and its constituent projects, if conducted in a timely manner, presents an opportunity to advance Australia's FRS relative to other nations (e.g., US and Canada) and deliver positive outcomes for producers and consumers alike.

In addition to the objectives of protecting public health, sustainable food systems and trade, identified in the draft regulatory impact statement (RIS), CropLife recommends consideration of the following key policy opportunities to progress Australia's FRS:

- Product-based risk assessment
- Clear, predictable and efficient pathway for applicants
- Collaborative streamlining of applications
- Voluntary labelling of Genetically Modified (GM) foods
- Communications campaigns to counter disruptive misinformation regarding agricultural biotechnology, chemical and biological crop protection products in the FRS.

These recommendations are further reinforced in CropLife's recent submissions to the following consultations:

- FSANZ Act Review Scoping Paper (2020)
- Aspirations for the Food Regulatory System (2021)
- Modernising and Futureproofing the National Gene Technology Scheme (2021)

2. STRENGTHENING THE FOOD REGULATORY SYSTEM

CropLife commends the aspiration to identify where changes throughout the Act may be possible to modernise and future-proof food regulation, while delivering on the Australian Government's commitment to reduce unnecessary regulation. Regulation should not be unnecessarily restrictive but be commensurate with genuine identified risks.

CropLife supports FSANZ's rigorous and transparent process for assessing the safety of foods, including GM foods, based on internationally established, rigorous scientific principles, standards and guidelines. The Australia New Zealand Food Standards Code is the primary legislation regulating genetically modified food and food ingredients. Accordingly, it determines how agricultural biotechnology companies bring innovative new products to the Australian market. In addition to food safety assessments conducted by FSANZ, agricultural technologies are also regulated by the OGTR and the Australian Pesticides and Veterinary Medicines Authority (APVMA), to ensure all products and associated technologies meet statutory safety requirements. The OGTR liaises closely with other regulators to ensure the identification, evaluation and management of any risks that may be associated with the development and use of gene technology. This allows for a thorough and coordinated assessment of products and proposals.

Australia's independent regulators are internationally regarded for their robust scientific and evidence-based regulatory and compliance measures. While efficiency of their operations has previously been drawn into question, it is important that regulatory reform does not overlook existing strengths as it strives for accelerated processes. The regulation of food standards must be entirely independent from commercial and political influence. This ensures that all regulatory decisions are independent and based on credible science with the primary objective being protecting the health and safety of consumers. Differences between perceived and actual risk levels (consumer acceptance) among the community can be a significant problem, particularly where products are indistinguishable as being created by gene technology or not. A change in regulation could change the public perception of foods and food ingredients.

To ensure the regulatory environment is conducive to innovation, FSANZ needs to maintain strong safety standards and support the delivery of pre-market regulation of products developed using new technologies by utilising a product-, rather than process- based approach to risk assessment. In areas where technology development is continuous, such as plant sciences, there is often a substantial delay before the need for change is recognised and changes are implemented to update obsolete legislation. The lack of regulatory certainty in the interim negatively impacts on the development and resulting commercialisation of innovation. There have been several recent examples of such a lag both for crop protection and biotechnology in Australia, including the implementation of the Review of New Breeding Techniques by FSANZ. The final report published in December 2019 identified the definitions in the Code as not fit-for-purpose. Action on the recommendations has been severely delayed, not allowing regulations to keep up to date with developing technologies.

3. Reducing regulatory burden and promoting streamlining

CropLife supports streamlining regulatory requirements and processes that are aimed at improved efficiency, effectiveness and flexibility to foster risk-proportionate regulation, less undue regulatory burden and improved clarity in terms of a pathway to market for developers. It is also important that regulatory reform of the FRS is progressed in parallel with other various continuing reform initiatives where legislation and regulation interact (e.g., The National Gene Technology Scheme (NGTS)) to support the regulatory, legislative and operational basis for the respective systems. Streamlining applications based on well-established standards and/or risk assessments would also be beneficial for the efficiency of FSANZ. Instead of duplicating efforts, resources could be redirected to other activities. Risk-based approaches to regulation in-line with the Government's own regulatory best practice principles must be maintained along with appropriate and rigorous regulation of crop protection products and GM crops in the FRS. It is equally important that any regulation is carefully considered, as duplicative, excessive regulation will have implications for costs, discourage investment and continue to impede innovation, while not delivering any improvement in safety, health or environmental outcomes. CropLife supports maintaining the current legislative arrangements, whereby the APVMA has the power to amend Schedule 20 of the Code, without sign-off by the Food Ministers' Meeting. The APVMA's independent, science-based, and rigorous mandate is tasked with ensuring crop protection products are safe to use and present no unacceptable risk to consumers, the community, the environment or Australia's domestic and international trade of agricultural produce.

Regulation inhibiting the path to market for innovation is an ongoing frustration and not restricted to FSANZ. In the realm of biotechnology and specifically the progression of GM and gene-edited products, the implementation of the NGTS is still incomplete despite initial recommendations dating as far back as 2011. Ten years later, no progress has been made. While not directly linked to FSANZ, this leads to inefficiency, lack of regulatory clarity and frustration, which not only serves as a deterrent to investment in research, development and extension and physical products of technology in Australia but highlights foregone opportunities.

The lack of clarity and certainty in Australia's biotechnology regulatory framework has failed to keep pace with technical developments. This results in a disproportionate regulatory burden on some products developed using plant breeding innovations, such as genome-editing where products are regulated as genetically modified organisms (GMOs) based on the use of gene technology, rather than the risks presented by the characteristics of the final product. This is disproportionate because many of the resulting products are comparable to those developed using conventional methods that are not within the regulatory scope of the NGTS.

The implementation of the recommendations from the Third Review of the National Gene Technology Scheme is a crucial step to improve the existing risk-based regulation. This will achieve a better balance between regulating the process involved in creating products of gene technology and regulating any potential risks to human health and safety and/or the environment.

Regulatory systems that do not keep up with scientific development limit innovation, irrespective of the size of the enterprise. Developing improved crops requires significant investment and the regulatory burden can make or break a project. Business decisions are made depending on regulation processes and costs. We must not limit the use of these technologies – depriving farmers and consumers of improved or innovative crops and products – because of poorly considered or inconsistent regulation.

4. Voluntary Labelling

CropLife supports voluntary labelling of foods and food ingredients for information of actual health and safety purposes only. Voluntary labelling recognises a balance between the provision of consumer information with the cost and other practicalities of providing that information.

Mandatory labelling of GM and GM-derived foods and food ingredients does not bear any relevance to the health and safety of food. Mandatory labelling for non-health and safety reasons can imply a regulatory concern where none exists and contributes to public misconception of the technology.

All scientific and regulatory bodies that have examined the evidence have declared approved GM crops and the foods derived from them are as safe as their conventional counterparts. A food label has finite space and can contain only a fixed amount of information. Unnecessary mandatory requirements reduce the ability of food manufacturers to provide information about the product that is actually important to consumer purchasing decisions.

All information on labels comes at a cost and CropLife believes consumers should not be required to pay for mandatory information where there is no risk to human health or safety. Like the adoption of marketing terms widely and voluntarily advertised in response to consumer demand such as ‘organic’, ‘low-fat’, ‘low-salt’ and ‘sustainably sourced’, food manufacturers will voluntarily provide product information in response to consumer preferences.

5. Sustainability

The extension of FSANZ's regulatory function to promote food sustainability is not supported as it would diminish the regulator's primary purpose. It is not FSANZ's function to promote food sustainability via regulation.

In conjunction with the Australian Competition and Consumer Commission, ensuring that label claims are substantiated and certification standards are scientifically robust, consistent, adequately assessed and regulated will contribute to increased consumer confidence in label requirements and product claims.

Any consideration to extending FSANZ objectives in such a way that incorporates sustainability should only regard food safety and the Food Standards Code where references are made for marketing purposes or product claims and the publication of information to increase public awareness of food standards and food labels. For these purposes, the term sustainability would ideally incorporate primary aspects of sustainability by encompassing social, environmental and economic dimensions consistent with global definitions and principles.

6. Regulatory sandboxes

CropLife does not oppose the introduction of a mechanism to trial new products, or the concept of regulatory sandboxes where they pertain to a "safe space" in which innovative products, services, business models and delivery mechanisms can be tested without immediately incurring regulatory consequences of engaging in the activity in question. Where these products and their constituents have already been assessed, however, we do not support imposition of unnecessary, unjustifiable regulatory burden.

Regulatory sandboxes should not replace or delay reforms that would otherwise remove unnecessary regulation and facilitate these activities in the first instance, where food products of these technologies have been deemed safe by the regulator(s).

To be successful, collaborative streamlining of applications is also essential and particularly important where products require evaluation by several regulators. For example, products of biotechnology that require joint assessment by the OGTR, APVMA and FSANZ prior to approval.

Australia's gene technology regulatory system operates as part of an integrated legislative framework. The Gene Technology Regulator (GTR), supported by their office, the OGTR, is responsible for assessing the risks to the health and safety of people and the environment associated with the use of gene technology. The Australia New Zealand Food Standards Code is the primary legislation regulating genetically modified food and food ingredients, and accordingly determines how agricultural biotechnology companies bring innovative food products to the Australian market.

Food and food ingredients derived from GM plants is rigorously assessed by FSANZ to ensure they present no risk to consumers. This is after plant science companies have spent on average 13 years and US$136 million researching and developing each new crop biotechnology product (this is now dated figures, from 2012). Such GM food products will help ensure that all Australians have access to a safe and nutritious, food secure future.

7. Food safety information

Consumer safety is CropLife's and our members' highest priority. We recognise the importance of gaining and maintaining community trust in our role in the food production supply chain. We are committed to product stewardship and ensuring the health and safety and the responsible and sustainable management of the environment and trade issues associated with crop protection products and biotechnologies in Australia.

CropLife supports FSANZ's rigorous and transparent process for assessing the safety of foods, including GM foods, based on internationally established, rigorous scientific principles, standards and guidelines. FSANZ's mission is to ensure health and safety risks from food are negligible for the whole population. Food products approved by FSANZ are safe.

While we do not oppose the collection, consolidation and communication of food safety data by FSANZ, we do question the perceived requirement for its legislation. CropLife believes that FSANZ, like all stakeholders in the food regulatory system, should have a targeted communications strategy for meaningful engagement with the community regarding their purpose, processes, responsibilities and decisions and the quality and safety of products approved for market in Australia.

It is understood that FSANZ, along with other government agencies and independent regulatory authorities in Australia and New Zealand, ensures the food supply is safe. This is currently achieved, among other things, via targeted surveys and the Australian Total Diet Studies, which collect analytical data on residues, contaminants and nutrients in food, in addition to FSANZ's general surveillance activities. Food safety is also ensured via the Hazard Analysis and Critical Control Point (HACCP) system, which is adopted by the joint World Health Organisation (WHO)/Food and Agriculture Organization (FAO) Codex Alimentarius Commission, with compliance enforced by local, state and territory jurisdictions.

In addition to compliance and enforcement of food standards and safety conducted by various jurisdictions, most - if not all - agricultural and food production, processing and manufacturing sectors and commodities industries also self-assess with industry regulated quality assurance programs and have done so effectively with government oversight for decades. The dissemination of data beyond what is mandated and already effectively managed by industry and governments should be considered with caution so as not to unintentionally contribute to confusion or misinformation in national and international

arenas. This is particularly important where there could be implications for trade or could unjustifiably call into question the quality and safety of Australian produce, which in turn could impact market access. Given the increasingly technical and phytosanitary barriers, the difficulty and cost of doing business can potentially create economic and compliance impacts for Australian growers, exporters and the broader supply chain.

CropLife supports more proactive and effective engagement with the community and the media by FSANZ to ensure that sensationalist, misinformed commentary is not permitted to dominate the public discussion regarding the safety of food products. safe

Governments and regulators have an important role to play in evidence-based communication and in engaging more proactively with the community, including local councils and food industry stakeholders, regarding the regulatory process to improve efficiency and trust in the system. While community concerns regarding the safety of food should not be ignored, it would be inappropriate for them to be a primary driver for the design and operation of the regulatory process. Instead, a robust regulatory system should be based on science and evidence. We emphasise that the education of consumers regarding the regulation and safety of food products, while intrinsically linked to the regulatory system, should not form a part of its design or implementation. Critical resources required by FSANZ should not be diverted away from their core business and community engagement should not come at the expense of regulatory efficiency or be cost-recovered from applicants.

8. CONCLUSION

CropLife commends the Department of Health and New Zealand MPI joint initiative to modernise the FRS and its constituent projects and the timely progression of the FSANZ Act Review. If conducted in a timely manner with consideration of other significant regulatory reform, namely the Review of Food Derived Using New Breeding Techniques (NBTs) lead by FSANZ and the NGTS, this presents an opportunity to advance Australia's FRS relative to other nations and deliver positive outcomes for local and international producers, manufacturers and consumers.

Modernisation of the FRS in conjunction with the implementation of the recommendations from the Review of Food Derived Using NBTs and the Third Review of the National Gene Technology Scheme is crucial to improve the existing risk-based regulation, in order to achieve a better balance between regulating the process involved in creating products of gene technology and regulating the risks (if any) to human health and safety and the environment associated with the final products.

Agricultural chemicals and genetically modified crops are major contributors to the safety, sustainability and productivity of Australia's food production systems. The benefits they generate for farmers, other users, consumers and the environment far outweigh any manageable or imagined risks associated with their adoption or use. These tools are vital to producing nutritious, healthy, affordable and disease-free food for Australian and overseas consumers.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 10:39:31**

About you

What is your name?

Name:
Fiona Fleming

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Australian Institute of Food Science and Technology Limited

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Formed in 1967, The Australian Institute of Food Science and Technology (AIFST) represents food system professionals working in all facets of the food industry: food science, food technology, engineering, sensory, new product development, innovation, regulatory, QA, nutrition, microbiology and food safety, as well as those in leadership positions within the academic, industry and private sectors.

Our Purpose:
To unite food industry professionals in the science of food.

Our Mission:
To advance and inspire all food sector professionals through education, collaboration and recognition to champion a robust, innovative science based Australian food industry to meet future food needs.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

There is currently ambiguity around FSANZ's broader role in achieving public health, nutrition, and safety objectives beyond acute food safety issues, such as promoting healthy eating and protecting Australians and New Zealanders from diet-related diseases. Clarifying the definition of the term PH&S in the primary legislation is an important step to creating the overall strategic direction for the FSANZ Act and for FSANZ.

AIFST suggests that Policy on what Food Minister's see as an appropriate definition of PH&S is needed, based on the following key principles:

• The definition is fit for purpose

• safeguards the quality and safety of the food supply
• Maintains FSANZ's primary responsibility to protect public health and safety to ensure safe and suitable food under the section 18 objectives of the FSANZ Act
• allows innovation by industry and does not create trade barriers.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Whilst food sustainability is important, protection of public health and safety to ensure safe and suitable food should be FSANZ's key priority. Without a specific definition of sustainability in the RIS, no further comments can be made.

But the principal role of FSANZ should be in reducing risks related to food and not addressing sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The regulation and approval of novel foods may be a specific example. However, it is unclear how recognition of indigenous culture and food expertise specifically relates to food, progression of standards by FSANZ and ensuring the safety and suitability of food under the section 18 objectives of the FSANZ Act.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

AIFST does not support this option as it does not optimally support a strong, resilient and agile regulatory system and allows only a limited degree of risk-proportionality when progressing standards work, compared to option 2. AIFST agrees with other stakeholders identified in the RIS, that this option would represent a missed opportunity to ensure that the Act remains fit-for-purpose and is adequately future-focused.

There are opportunities to revise the Act so it remains fit-for-purpose and appropriately future-focused. The ability to create a more agile standard-setting process, that proportionately focusses on risk and encourages innovation is highly desirable.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

AIFST sees the key risks for our industry as the following:
• costs associated and delays with the application process is a real barrier to many small and medium businesses seeking variations to food standards.
• Delayed or missed opportunities for employment growth and food industry economic growth
• Reduced opportunities for Food R&D across both academic, industrial and agriculture sectors
• Reduced uptake of students into Food Technology and associated disciplines at ANZ tertiary institutions and the potential for a "brain drain" to overseas
• limited recognition/harmonization of international approval processes.

Greater recognition of international standard setting processes (CODEX, European Union, and the United States) could facilitate faster approval processes. There is also an opportunity to revamp the way low-risk applications are handled and ratified, and to enhance harmonization of the way the Code is enforced across jurisdictions.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

AIFST has access to data and would be willing to share this in-confidence.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

AIFST has access to data and would be willing to share this in-confidence.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

AIFST has access to data and would be willing to share this in-confidence.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The issues consist of the following:
• The considerable waiting time once an Application has been submitted to FSANZ and commencement of the work on the Workplan
• The current case-by-case application process for specific approvals (e.g., enzyme applications) when approvals may have been granted in other countries is inefficient to achieve approvals in a timely manner.
• associated cost burden of submitting data for assessment by FSANZ.
• The 60-day delay by the Food Minister's considerations when the FSANZ Board has signed off on a standard.

Which result in the following opportunity costs for industry:
o Reduced global competitiveness and missed sales
o Reduced efficiency and increased costs
o Industry skewed to larger players who play the longer game
Many low-risk applications for amendments (e.g. processing aids, MRLs) to the Code could be handled in a more timely and cost effective manner. Including a revision to the Board approval process, and the requirement for Food Ministers to approve low-risk amendments.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

No comment

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST supports clarifying and reinforcing the objectives and functions of FSANZ as outlined in the FSANZ Act. With the goal of strengthening the existing data-driven, intelligence led decision-making process, and enhancing the level of engagement and integration between stakeholders within the food regulatory system.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

AIFST believes that food safety, health and economic impacts must be considered ahead of sustainability. The principal role of FSANZ should be in reducing risks related to food and enabling consumers to make informed choices as they relate to nutrition and food safety.

Sustainability is not under FSANZ's principal remit of protection of PH&S. Furthermore, without a definition of sustainability in the RIS, no further comments can be made.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

FSANZ is responsible for protecting public health and safety - sustainability is not a consideration in risk assessments and should not influence the primacy of the former.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Progression of standards by FSANZ to ensure the safety and suitability of food under the section 18 objectives of the FSANZ Act should continue to be the principal mandate of the FSANZ Act. Therefore, AIFST questions what the intent of recognising indigenous culture and food expertise is for the regulation of food. The principles of safe and wholesome food should be independent of cultural considerations.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No comment

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST notes that FSANZ already undertakes a risk-based approach to food standards development, but supports further considerations as follows:
• Provide for the Forum to delegate decision-making to FSANZ for more low risk, technical amendments and editorial changes
• Use of international standards and risk assessments from approved jurisdictions.
• Enable FSANZ to adopt international standards, where supported by a credible risk assessment including dietary patterns and industry practices relevant to the Trans-Tasman system.
• new pre-market pathways (via automatic or minimal check options) to expedite low-risk amendments to food standards or a post-market focus for foods that present exceptionally low risk to consumers based on clear principles and guidelines.
• Where appropriate, self-substantiation pathways

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

AIFST supports concept/policy of Food Ministers' delegating to the FSANZ Board for decision-making for specific standards (e.g., Applications which have minimal, or no risk assessments needed). Currently the Australian Pesticides and Veterinary Medicines Authority (APVMA) can change the Maximum Residue Limits standard of the Food Standards Code directly, without oversight of the Food Ministers' Meeting.
Alternatively, would it better to have some kind of multidisciplinary panel so the Board itself can focus on compliance and running the organisation.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The current Food Standards Code was updated recently with a focus on legal argument rather than practicability for industry. Small and medium businesses are finding it more difficult to navigate and interpret the Code.

Therefore, AIFST supports minimal effective regulation, codes of practices that are flexible and if a review is needed of a COP, this could be undertaken in a timelier manner.
Codes of practice could be utilized for public health and safety issues that do not necessarily need a black letter of the law approach – for example: serving size, Treatwise, Precautionary Allergen Labelling (PAL).

Such non-regulatory measures have the advantage of supporting consistent interpretation and implementation across jurisdictions. As they are not enforceable, they should be seen as guidance for meeting the requirements outlined in Standards.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

AIFST has access to data and would be willing to share this in-confidence.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

AIFST has access to data and would be willing to share this in-confidence.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST supports this as a concept but there would need to be more information and education about how this would operate and an Australia wide acceptance of the framework and outcomes by state/territory jurisdictions.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

New processing aids, food additives that are approved in other jurisdictions.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

AIFST notes that this is already a function that FSANZ performs.

AIFST supports an expansive repository of food safety or food composition information through several key activities.

For example:
• more timely, holistic, and regular reviews of food standards.
• Equipping FSANZ to develop strategic relationships with New Zealand food safety research entities
• FSANZ as the guardian of key food safety databases
• FSANZ to collate and create consumer-facing food safety education materials

While FSANZ has a role, they should not be the ultimate source of all food safety information.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

No

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST notes that this is already a function that FSANZ performs but sees additional value in the following:
• FSANZ and the Food Ministers' undertaking periodic joint agenda-setting to agree on the proposals on which to focus. This would free up valuable FSANZ resources to not focus on generating standards that may not be necessary or effective to ensure PH&S.
• FSANZ could further partner with other government to make intelligence-led decisions and reduce duplication of efforts.
• FSANZ's databank could be available to inform high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

No, with shrinking budgets and increasing costs most are not in a position pay. Given the primacy of FSANZ and the requirements for transparency they should share the data – especially with not for profits.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST considers that this could be achieved by the following:
• Succession planning for replacement of Board members
• Increased use of virtual FSANZ Board meetings, rather than face-to-face meetings

• Investment into business solutions to help staff work more efficiently.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

AIFST does not support increased scope for cost recovery. Many sectors of the food industry find the existing Application costs prohibitive.

FSANZ's primary responsibility is to protect public health and safety to ensure safe and suitable food under the section 18 objectives of the FSANZ Act.

Therefore, standards should be able to be progressed without further cost implications for industry via a reduced timeframe for consideration of Applications and recognition of overseas approvals.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

In the first instance, this would impact on whether a business chose to proceed through the FSANZ approval process. In addition, this would reduce the opportunities for industry innovation for new food products, limit consumer choice and availability to new foods

SMEs would find the impact of cost recovery prohibitive.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

AIFST members have either led or been a principal stakeholder in applications seeking permissions for a range of enzymes, food additives, novel foods for example.

AIFST has also provided comments on Applications and Proposals where relevant.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

These are as follows:
• Difficulty or no knowledge how to engage and seek approvals.
• The current FSANZ Application Handbook is not user friendly.
• Navigating the Code is not straight forward.
• Timely consideration of applications
• Extensive risk assessment data needed to support applications.
• Time permitted to respond to consultations is often quite short and does not take into consideration the time required to collate information needed to provide feedback.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

AIFST would engage more if the system was more flexible and less prescriptive. This includes pathways that expedite adoption of overseas standards and industry self-substantiation pathways for low-risk products, such as food additivities that are similar to other products already covered by standards.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The current system is working well and there is no real need to change.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

AIFST has access to data and would be willing to share this in-confidence.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

The current system is working well and there is no need to change.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

AIFST strongly endorses FSANZ providing greater guidance on food standards.
This is because:
• There is currently inconsistency with interpretation of the Food Code due to the differing views of regulators and/or regulators not willing to provide interpretative advice. With FSANZ being the 'one source of guidance', there is the ability to provide a consistent approach. This would allow greater clarity for those businesses that operate in all, or many, jurisdictions. At the moment, there is inconsistent interpretation by some regulators or a lack of guidance which makes it difficult for a business to understand whether it is operating within the law or not. For example:

o One regulator stating a provision of the Food Code means X whereas the regulator in a different State believing it means Y. The effect being that the product is at risk of non-compliance in one State but not in the other. Given it is the same law, this seems absurd and creates unfair barriers to trade.

o Another scenario is where the New Zealand regulator considers X view and there is uncertainty as to whether this same view is taken by Australian regulators – ISFR will also not assist with administering guidance to allow for a consistent approach. As such, there is no real answer for a company around the specific interpretation which creates uncertainty. There is no clear answer for the company in question.

• It is commonly understood that the Implementation Subcommittee for Food Regulation (ISFR) can be used to facilitate common approaches to implement foods standards through the development of guidelines. However, AIFST question whether this current process works and believe that it is likely FSANZ is a better body for providing these guidelines / interpretative advice (in consultation with other regulatory bodies / key stakeholders). FSANZ are better placed to understand the context and purpose of the laws as well as the scientific technicalities.

• FSANZ is the body that drafts the Food Code therefore understands the reasoning behind why the standards have been drafted. The context is therefore likely understood more within FSANZ than other regulatory bodies which then assists with the correct interpretation.

However, risks also arise that would need to be addressed:
• In providing interpretative advice, FSANZ would need to ensure it is consistent with CODEX interpretations/guidelines in this regard.

• With respect, FSANZ sometimes may take a 'black and white' interpretation to the law and in many cases interpretation is wider than just the letters on the paper. Interpretation should be considered from both a technical perspective, purpose of the provision, context of the relevant law as a whole, the legislative history (ie. what is the provision trying to ascertain or 'fix') and the wider context (including overseas laws / guidelines / WHO / Codex etc). FSANZ would need to ensure that it interprets laws in a wider rather than narrow view.

Other Comments
• It would be beneficial if FSANZ released a 'commonly asked questions' interpretative guidance document each year – this could address the most commonly

asked questions, and the resulting answers. This could be similar to the FSANZ Novel Food Record – it can be updated if views change but provides one 'source of truth' for industry to at least look to for general guidance. Another option is to update the FSANZ User Guides on the FSANZ website and include information on the commonly asked questions.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

AIFST has access to data and would be willing to share this in-confidence.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

AIFST does not support FSANZ taking on an enforcement role.

FSANZ should maintain its principal function of protection of PH&S and providing advice/guidelines on the intent of food standards.

For example, a broader enforcement role would involve functions such as auditing of businesses for food safety plans which is currently beyond FSANZ's remit and capability.

The makeup of the food regulatory system with Federal, state/territory and local councils makes enforcement issues too complicated to drive from a single Commonwealth source.

Due to the requirement for on-site calls enforcement of food safety and site audits appropriately sits with local area health authorities.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

AIFST's position is that FSANZ should focus on delivering its core business effectively before broadening its remit and risk diluting the organisation's impact. FSANZ's credibility and trusted status as a risk-and science-based standards setting body could be compromised if it took on additional functions, such as regulatory roles.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No comment.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

AIFST believes that FSANZ is already an active player on the international stage through its engagement with CODEX, and its relationships with WHO, FAO, US authorities, etc. Each senior professional within FSANZ should have a network of local and international experts and engage with them on a regular basis. AIFST supports clarifying legislation so FSANZ can extend Australia and New Zealand's influence on the international stage, to build better strategic relationships with comparable international regulators to either share assessments or standards or make these together for mutual benefit as part of the harmonisation process. Ultimately greater harmonisation with international standards will create new or strengthened trade channels which will benefit Australia and New Zealand businesses.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

No comment.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Yes. AIFST re-iterates its support for the following:
• FSANZ to provide clear guidelines and interpretation of standards in the Code
• The FSANZ act should provide for minimum effective regulation
• Level playing field for the domestic food industry compared to international industry
• More user-friendly processes for making applications to FSANZ for all industry sectors
• No further extension of the cost-recovered arrangements so as to aid industry innovation and keep costs to a minimum.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

AIFST supports option 2 with components 1,2, 5 and 6 as key priorities. This would provide:
• A modern, fit-for-purpose regulatory framework
• A strong, resilient and agile food regulation system
• More flexible and risk-proportionate approaches
• Expanding the objectives to explicitly reference trade as a core objective of FSANZ (although subordinate to public health objectives) would better reflect the importance of a competitive domestic and export food industry for both Australia and New Zealand.
• a significantly new approach to developing or varying food standards or introducing foods to the market via other mechanisms, noting that changes would require some operational adaptations for both FSANZ and industry.
AIFST specifically, supports Legislative changes that could:
• Support more risk-based processes and decision-making verses overriding policy decisions.
• Resourcing FSANZ to undertake regular, more holistic reviews of food standards so that food standards remain contemporary, fit for purpose, and encourage industry innovation. For example, a review of the mandatory labeling of irradiated foods.
• Provide for the Forum to delegate decision-making to FSANZ for more low risk, technical amendments and editorial changes.
• Make best use of international standards and risk assessments and enable FSANZ to adopt international standards, where supported by a credible risk assessment including dietary patterns and industry practices relevant to Trans-Tasman system
o FSANZ could 'cherry pick' whether an international standard was more suitable than a current standard in the Code. That could be a trigger point for a FSANZ review that resulted in a clear systematic, evidence-based and strategic approach to an updated standard in the Code.
• The Act could be amended to enable FSANZ to formally recognize and adopt the assessment and determinations of 'overseas bodies' (with appropriate statutory controls). This could be limited to specific international bodies (such as Codex) or specific assessments (such as chemical risks assessments undertaken by the Joint Food an Agricultural Organization of the United Nations / World Health Organization Expert Committee on Food Additives) or could be a more general power.
o This could help to promote industry innovation and reduce data requirements for applicants.
• Streamlining current pathways to amend food standards, including through expanded use of the process for minor variations, delegation of the FSANZ Board or the Food Ministers' Meeting decision-making and acceptance of risk assessments from overseas jurisdictions.
• Creation of new pathways to expediate low-risk amendments including automatic adoption of new standards from select international regulatory systems, minimal check pathways and an industry self-substantiation pathway.
o Leverage other regulatory instruments, i.e., guidelines and codes of practice
o An industry self-substantiation pathway for very low-risk products (e.g., irradiated food with minimal dietary exposure impacts) would enable businesses to bring products to market without making an application to change food standards (or waiting for FSANZ to adopt relevant international standards). This would provide specific benefits for smaller food businesses that are less likely to be able to afford to apply for changes to food standards (even through streamlined pathways and more risk-proportionate processes).
• Broader education/information campaigns to assist with fuller consideration of potential non-regulatory risk management options, rather than a regulatory (standards setting approach).
• Regular industry training on the application process

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

AIFST agrees that the reform options presented in the draft Regulatory Impact Statement align with all the draft Aspirations for the Food Regulatory System.
AIFST supports Option 2 as it aligns with:
• Responsive, transparent decision-making
• Proportionate and effective responses to policy and compliance issues
• Continuous improvement of the system

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response to Review of the Food Standards Australia New Zealand Act 1991 - Draft Regulatory Impact Statement

Submitted by:

United Fresh
New Zealand Incorporated

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Submitted to (FoodRegulationModernisation@health.gov.au) on 18 May 2021

Introduction

United Fresh is the only pan-produce industry body in New Zealand. Our membership includes growers, grower organisations, pack-houses, wholesalers, and service & logistics providers, as well as retailers. Our industry aims to provide New Zealand a healthy and safe supply of quality produce. Our vision is to create a sustainable fresh fruit and vegetable industry for New Zealand.

United Fresh represents an industry that almost every New Zealander interacts with on a daily basis. Our industry provides fresh and nutritious fruit & vegetables to New Zealanders almost every day of the year, with more than $1.6 Billion of fresh fruit & vegetables sold in 2019.[1]

As a result of our fruits & vegetables being present in almost every meal eaten by every New Zealander, any food safety issue in this food supply network risks significant impacts to large sections of the population. Over the last decade, our industry has seen several food safety incidents occur,

On behalf of the New Zealand Produce Industry, United Fresh therefore wishes to make a submission on "*Modernising The FSANZ Act: Draft Regulatory Impact Statement*".

United Fresh also welcomes the opportunity to comment on the proposed changes by way of this submission, as it provides us, as the pan-produce industry body, with the opportunity to enhance our membership's understanding of the issues that have led to the Review of The FSANZ Act, and the proposed amendments to modernise this Food Safety legislation.

Prepared by The United Fresh Technical Advisory Group,
Anne-Marie Arts, Food Safety Representative

[1] Aitken, A. G. & Warrington, I. J (2019). Fresh Facts 2019. The New Zealand Institute for Plant & Food Research.

Situation Overview

As noted in the Draft Regulatory Impact Statement:

> *"The Food Standards Australia New Zealand Act 1991 (the Act) is one of several foundational instruments that make up the joint food standards system*
>
> *The Act has been in place for almost 30 years, with few amendments over that time. Yet, in the same period, the food industry has evolved radically, with new technologies, more globalised supply chains, and shifting dietary patterns constantly pushing innovation and reshaping consumer expectations.*
>
> *Many stakeholders have been quick to stipulate that the Australia-New Zealand joint food standards system is not broken; and FSANZ delivers a highly valued service to the community. They observed that there are many elements of the current scheme that should be preserved, including FSANZ's independence, bi-national nature, and scientific approach.*
>
> *However, there is also evidence that the regulatory framework has struggled to keep pace with the changing landscape, which has challenged FSANZ to deliver efficient and effective regulation and minimise regulatory burden across the system.*
>
> *The Act is now undergoing its first major review in almost 30 years (the Review), which presents an exciting opportunity for modernisation."*

This modernisation of FSANZ is intended to fix the three major policy issues identified with the current system:

1. The Act does not support efficient and effective regulation and is burdensome to administer in its current form.
2. Legislation does not enable a strong, resilient, and agile joint food standards system.
3. Current arrangements undermine the power of a single, joint food standards system.

As a result of earlier consultation and review, three separate options are now proposed for modernising the FSANZ Act – a "Status Quo" option, a "Modernise" Option, and an "Role Expansion" option. Feedback has been requested on the perceived viability of each of these options to adequately meet the Food Safety needs of the future/

We note that our submission does not answer every question posed by Food Standards Australia New Zealand. We are limiting ourselves to questions of particular significance to the New Zealand produce industry, as we are the pan-industry body for produce in New Zealand. Questions outside our industry scope have therefore not been answered.

As such, the United Fresh Response is focused on the following questions from the Draft Regulatory Impact Statement Document:

- Questions 1-2.
- Questions 11-13.
- Questions 17-18.
- Question 23-24.
- Question 27.
- Question 32.
- Question 36.
- Question 38.
- Question 39.
- Question 41.
- Question 44.

Question and Response Section

1. Would the impact of pursuing Option 1 represent a positive, negative, or neutral outcome for your sector?

   Option 1 – "Maintain The Status Quo" - does not address the issues of FSANZ as a modern standard setting body. After thirty years change is necessary.

2. What examples or issues are you aware of in the food regulatory system regarding food sustainability?

   Food sustainability is an increasing concern across the food supply chain.

   We do not support a formal role for FSANZ in relation to food regulatory sustainability standards. Our position is it would be an unnecessary diversion of resources away from food safety for a concern that is addressed by other agencies in both Australia and New Zealand.

   The New Zealand Ministry for Primary Industries (MPI) already has a roles in food regulatory sustainability.

11. Would the impact of pursuing Option 2 represent a positive, negative, or neutral outcome for your sector?

    United Fresh is generally supportive of Option 2 as a necessary step in allowing FSANZ to positively respond to changing needs effectively especially in food standards development.

12. **If FSANZ's objectives were broadened to include sustainability, how should sustainability be** defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts)?

    United Fresh does not support the extension of FSANZ scope into sustainability. A focus on Food Standards setting and development is more appropriate.

13. What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

    Economic opportunities are being identified and captured by businesses with the assistance of four government agencies in New Zealand already. United Fresh questions what value or expertise FSANZ can bring to a table which is already well served.

17. **Do you think this Component should also include the ability for the Food Ministers' Meeting to** delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

    Decision making should be delegated to a strengthened FSANZ board. Placing Food Safety decision making in the hands of technical experts is supported by United Fresh.

18. What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Codes of practice or guidelines are useful. However, these need to be developed in conjunction with industry. From a fresh produce industry perspective, there are significant differences in production methods, scale and focus between Australia and New Zealand. This means some of the work may need to be adapted to different conditions.

23. Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

United Fresh is generally supportive of FSANZ collecting data that could be consolidated and communicated, However, we are not certain this needs to be legislated.

United Fresh supports FSANZ being resourced to undertake more timely, holistic, and regular reviews of food standards.

Equipping FSANZ to develop strategic relationships with New Zealand food safety research entities is supported.

United Fresh is does not support positioning FSANZ to be the guardian of key food safety databases.

United Fresh does not support collating and creating consumer-facing food safety education materials because these need to be country and culture specific.

24. Should a function for FSANZ to collect, consolidate and communicate food safety data be legislated?

United Fresh supports the proposal that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards.

Positioning FSANZ to be the guardian of key food safety databases presents risks. Further information about how this would be collected and to what use it would be put is required to clearly determine the role, or not, FSANZ has in this area.

27. Would the impact of pursuing Option 2, Component 6 represent a positive, negative, or neutral outcome for your sector?

The scope of FSANZ's work is broad. United Fresh considers a Board of 12 expert members is needed to function properly.

32. What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

The current costing model is a barrier to FSANZ achieving increased relevance include cost recovery models. Embarking on a wider range of activities would exacerbate this.

36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? Neutral?

MPI undertakes this role in New Zealand. United Fresh does not support FSANZ taking this over, because of the ongoing disruption this would cause in the industry.

38. Is FSANZ coordinating food recalls/incident response a function that would be equally valuable for Australia and New Zealand? Why?

    There is no advantage rather disadvantages for such a function to be conducted by FSANZ in New Zealand. United Fresh does not support this.

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

    United Fresh agrees that provision of non-binding guidance on food standards could assist in reducing uncertainty. FSANZ would need to be resourced to update and maintain industry guidelines.

41. Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

    There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

44. Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

    Both countries need their own voice in the international arena.

    NZ exports approximately 50% of its fresh produce, whereas that percentage is substantially smaller for Australia. This changes the dynamics of the industry. FSANZ will not be able to represent New Zealand interests as effectively as New Zealand entities can.

Summary

While United Fresh agrees with the need for a review and modernisation of FSANZ, United Fresh disagrees with several of the proposed changes within the Draft Regulatory Impact Statement. In our view, these changes will not help FSANZ to regain its status as a modern food standards setting body.

We note that several concepts outlined in the Draft Regulatory Impact Statement, in our view, detract from the three policy problems that formed the basis of this review.

We also note that option 3, exploring role expansion for FSANZ, would lead to a dilution of what is supposedly FSANZ's core competencies, and from United Fresh's perspective would add additional regulatory layers.

The problem with such regulatory layers is that:

1. An expanded FSANZ would enter spaces already occupied by existing New Zealand agencies, and;
2. The nature, structure, and scope of the New Zealand produce industry differs quite significantly from its Australian counterpart. A 1-size-fits-all approach, built around the needs of Australian businesses, would put the New Zealand produce industry at a distinct disadvantage.

United Fresh is available to provide further inputs, if and as required.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 12:05:09**

About you

What is your name?

Name:
Larissa Trownson

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Wine industry

What is your organisation?

Organisation:
New Zealand Winegrowers Incorporated

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

New Zealand Winegrowers provides strategic leadership for the wine industry and is the body that represents the interests of all of New Zealand's commercial grape growers and wine makers. Established in 2002, NZW s funded by compulsory levies under the Commodity Levies Act and the Wine Act and has approximately 1,400 members. New Zealand is the only major wine producing country to have a single, unified industry body representing all of its country's grape growers and winemakers.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

NZW in not wholly in agreement with the Policy Problems as stated for the reasons discussed below. NZW's general view is that securing the independence of FSANZ, re-focusing on core issues and competencies, prioritising scientific considerations over political considerations, and properly funding FSANZ would go a long way towards improving the outcomes of the food regulatory system.

NZW further notes that many of the sub-issues identified are specific to Australia and often pertain to a lack of consistency and coordination between the various jurisdictions within Australia. NZW believes that the fact that Australian jurisdictions are disjointed in their approach is not an inherent flaw of the FSANZ Act itself and therefore changing that Act will do little to resolve those problems.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

NZW strong disagrees with the idea that FSANZ should have a role in regulating sustainability. There are already a number of government agencies in New Zealand with a role in this area. This is not a core function for a food regulatory agency and would lead to unnecessary and costly encroachment on the regulatory competence or other agencies and on private sector standards. It is also not an appropriate subject for Trans-Tasman regulation since the priorities for sustainability will differ greatly between New Zealand and Australia.

The New Zealand wine industry has been operating a highly effective sustainability programme for more than 20 years which now covers 96% of New Zealand's vineyard area. This represents a major commitment of time and resource by the industry based on the belief of producers in the importance of sustainability as well as strong market signals supporting sustainably produced goods. It is regulated by general consumer protection laws regarding truth in labelling, overseen in New Zealand by the Commerce Commission. Additional government intervention through the food regulatory system would add nothing to the success of this programme.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

NZW is not in a position to offer any examples, but believes that recognition of indigenous culture and food expertise is a relevant consideration for the food regulatory system.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

It is reasonably rare for the wine sector to seek amendments to the Food Standards Code and these are usually uncontroversial and non-urgent. Implementation of the Code and other wine-specific standards is managed in New Zealand through the Wine Act administered by the Ministry for Primary Industries, so it generally operates under a consistent regime for interpretation and enforcement. Therefore, while NZW has a general interest in the effective operation of the food regulatory system, its main interests and risks in the food regulatory system are primarily responsive rather than proactive.

In recent years the wine sector has had to deal with a large number of applications or proposals affecting the labelling of wine. NZW believes that these have embodied some of the key issues affecting the food regulatory system, specifically the drift away from FSANZ's core competencies towards broader public health initiatives of limited effectiveness and the encroachment of the Ministerial Forum and FRSC on the independence of FSANZ. From NZW's perspective, there is a negative in failing to address these issues.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

NZW does not have such data.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

NZW believes that, while the current system is not perfect, there is a benefit to food businesses in stability, consistency and certainty in the food regulatory system. The existing system has a value for business and this must be taken into consideration when considering changes.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

NZW is not aware of any data that might assist in quantifying the magnitude of these costs and benefits.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See NZW's response to Question 5 above.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

While NZW is not a jurisdictional regulator, it is important to note that the direct costs of government monitoring and enforcement are not the only costs associated with the enforcement regime. Enforcement cannot be separated from the compliance measures that industry is required to have in place. Changing the enforcement structure would completely change the compliance structure and associated costs for industry.

To take the example of the Wine Act in New Zealand, compliance with standards in the Food Standards Code and wine-specific standards under the Act is managed proactively through the wine standards management plan. A heavier reliance is placed on independently audited compliance systems to manage the risk of non-compliance proactively than on ex post facto enforcement. This in turn places the cost of compliance on industry and helps to minimise the cost of enforcement for the government. Changing the structure of enforcement would necessarily also involve changing the structure of compliance in New Zealand, which would inevitably carry costs for industry.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

NZW agrees with some but not all elements of Option 2, Component 1 and therefore cannot say that it represents a net positive or negative. See comments below.

CLARIFYING SECTION 3 OF THE ACT BY INCLUDING A DEFINITION OF 'PROTECTING PUBLIC HEALTH AND SAFETY' THAT ENCAPSULATES BOTH ACUTE AND LONG-TERM HEALTH ELEMENTS

NZW does not support this proposal. It is not a clarification but an expansion of the role of FSANZ. The definition referred to shifts the focus away from "protection" to encompass the far broader and less clear concept of "prevention". This is a matter that lies within the remit of health authorities. FSANZ and food regulation generally is poorly suited to dealing with broader public health issues.

Where food regulation is used to address such public health objectives, food is invariably only one contributing aspect of the societal or health problem being addressed by the policy. The use of food regulatory policy can be proposed, falsely, as a simple solution, or an "obvious" lever to pull towards a solution – without ever attempting to grapple with the interconnecting societal, social, behavioural, economic, and other factors influencing the underlying problem.

The reality is that the only tool in the food regulator's toolbox to deal with such matters is labelling. Despite a proliferation of labelling initiatives globally, there is very little evidence that such measures are effective. This is hardly surprising since simply placing something on a label can do little to affect social determinants of public health. On the other hand, it is well established that labelling measures come at a significant cost to industry and ultimately consumers.

ALIGNING WORDING AROUND PUBLIC HEALTH PROTECTION ACROSS SECTION 3 AND SECTION 18

NZW does not support this proposal. It believes that the meaning of "public health protection" is clear and already encompasses safety.

EXPANDING THE OBJECTIVES OF FSANZ TO RECOGNISE TRADE AS A CORE GOAL

NZW strongly supports this proposal. Trade is a fundamental rationale for the joint food standards regime between Australia and New Zealand and this should be formally recognised. Neither Australia nor New Zealand is food self-sufficient and trade is therefore essential to maintaining food security.

ESTABLISHING CRITERIA IN THE ACT THAT THE FOOD MINISTERS' MEETING MUST MEET TO REQUEST A REVIEW OF A DRAFT REGULATORY MEASURE

NZW supports this measure.

EXPANDING THE OBJECTIVES OF FSANZ TO ADDRESS IMPORTANT PRIORITIES OF FOOD SUSTAINABILITY

NZW strongly opposes this proposal. See NZW's response to Question 2.

EXPANDING THE OBJECTIVES OF FSANZ TO INCLUDE RECOGNITION OF INDIGENOUS CULTURE AND EXPERTISE

NZW supports this measure, with the qualification that this support does not lead to any flow on rights or restrictions on food production.

THE ACT COULD BE AMENDED TO ENSURE THAT FSANZ HAS THE BREADTH OF STATUTORY FUNCTIONS REQUIRED TO EFFECTIVELY DELIVER ON ITS OBJECTIVES

NZW believes that FSANZ's statutory functions are already extremely broad. It does not see that there is a need for a new function relating to food fraud and food crime. The only roles that FSANZ could have in this area are to make standards, coordinate and gather information - functions for which it already has the necessary powers. For FSANZ to go further in this area would involve taking on an enforcement role which NZW does not support.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

NZW strongly opposes FSANZ having a role in sustainability. See NZW's response to Question 2.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

NZW strongly supports sustainability and has been operating the Sustainable Winegrowing New Zealand programme since 1995. It represents years of genuine commitment and investment on the part of New Zealand's wine sector. The aim of the programme is first and foremost about responsible stewardship of the environment for which grape growers and winemakers are responsible, rather than simply seeking economic opportunities. At the same time, NZW recognises that sustainability has become an important element in credentialising premium New Zealand wine and increasing consumer demand is validating the commitment made by the industry 26 years ago.

NZW believes that Question 12 is misconceived. Adding a new layer of regulation by an agency with no competence in this area does not equate to a greater focus on sustainability by industry. It will not generate any economic opportunities in itself; it will simply add cost and detract from the enthusiasm and initiative that already exists within industry.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

NZW is supportive of FSANZ's activities better recognising indigenous culture and food expertise. It does not have any comment to make on the other questions.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

NZW is supportive of FSANZ's activities better recognising indigenous culture and food expertise but does not have any further comment on this point.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

NZW believes that improvements to the efficiency of FSANZ process are generally positive.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

In NZW's view, this seems like a sensible approach for low risk applications e.g. additives and processing aids with prior approval in equivalent jurisdictions or international organisations.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

NZW's view is that codes of practice and guidelines can be useful but it is important that they, where they impact industry, they are developed in consultation with industry. NZW also raises the possibility of industry-led codes of practice or guidelines being ratified through this process.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

NZW has not prepared an application so is not able to provide this information.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

NZW's view is that it appears sensible to accept risk assessments on food safety from suitable overseas jurisdictions.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Neutral. NZW does not see that this would have an impact for the wine sector.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

See response to Question 21.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

NZW questions whether this function needs to be legislated. NZW is also cautious about some of the functions proposed duplicating existing functions within New Zealand government agencies e.g. developing educational materials, becoming the central repository for food safety data. It notes that some of these functions will require significant funding and questions whether these activities are the highest priority for FSANZ's limited resources.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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.

Structurally, the statutory division between policy development and standards setting under the FSANZ Act is appropriate: the policy development by the Forum is intended to operate as high-level politically-driven guidance from the current governments comprising the Forum, to be taken into account by FSANZ as it independently develops food standards or variations to existing standards, based on the best-available scientific evidence. NZW has voiced its concern in previous submissions that the Forum (and FRSC) has not always respected that division - as evidenced by the flawed process regarding the development of pregnancy labelling for alcoholic beverages referred to in NZW's earlier submissions.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

NZW's view is that there would be few, in any, circumstances in which the New Zealand wine industry would have the need and/or be willing to pay for such data.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

However, in relation to the proposals related to governance, NZW notes that for the FSANZ Board efficiency of decision-making should not the sole relevant consideration. The FSANZ Board must also serve a representative function incorporating a broad mix of interests and skills. That suggests that retaining a larger Board is more desirable. It seems unlikely in reality that a larger Board would result in delays or inefficiencies in decision-making that outweigh the benefits of having the right mix of skills and interests represented.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

NZW has no further comments on this point.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

NZW has no further comments on this point.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

NZW is not aware of any such data.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

NZW's view is that it is difficult to answer this question in the abstract. Both New Zealand and Australia have guidelines for government cost recovery, so simply asking if FSANZ should seek to increase its revenues by charging industry for certain activities is not a relevant framing since it fails to take into account other key considerations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

NZW repeats its response to Question 31 and makes the general comments that it is essential to take into account the fact that high costs will inevitably discourage small and medium enterprises from making applications or seeking information from FSANZ, which may run counter to its objectives.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

See response to Question 5.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

See response to Question 5.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

It is possible that NZW may engage more regularly with the food regulatory system if new pathways are introduced as proposed in this Draft Regulatory Impact Statement. New pathways that expedite low-risk amendments to food standards are most likely to result in increased levels of engagement.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

It would be unnecessary and duplicative for FSANZ to coordinate food incident and food recall responses on its own initiative.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Food businesses inevitably face significant costs when dealing with a food incident or recall. These include business disruption, administrative costs, direct costs of the recall and disposal procedure, loss of profit and damage to reputation. It is difficult to meaningfully quantify them since they vary considerably according to the nature and extent of the incident. NZW does not consider that FSANZ having a role in coordinating food incident and food recall responses will in any way reduce the associated cost. On the contrary, it is and is more likely to increase them.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

NZW does not see any value in FSANZ having a role in coordinating food incident and food recall responses in New Zealand. New Zealand wine producers already have good systems in place and stringent regulatory responsibilities around food incidents and recalls.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

NZW is generally supportive of this component and agrees that FSANZ could reduce interpretive uncertainty through the provision of greater non-binding guidance on food standards including statements of intent for food standards.

However, NZW has a reservation about FSANZ making binding rulings on aspects of the standards that have proven to be problematic. Often there are existing regulatory interpretations or industry understandings in place around ambiguous or unclear aspects of the Food Standards Code. A binding ruling on interpretation could potentially have a significant economic effect on businesses - as much or more even than a change to the Code itself. Therefore there should be clear parameters in place regarding the circumstances in which such a ruling is sought and the consultation that must be undertaken. There must also be a right of appeal from any such ruling.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Interjurisdictional inconsistencies are not significant in the wine industry due to the overlay of wine-specific legislation and Customs laws that ensure consistency at the national level.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

NZW sees no value in FSANZ taking on enforcement activities in New Zealand at any level in New Zealand. This would be unnecessary and duplicative. It would disrupt existing regulatory mechanisms and create cost for industry for no apparent benefit.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

Option 3 Component 3 is addressed toward jurisdictional issues within Australia. Implementing it in New Zealand would simply create difficulty and cost without addressing any identified problem.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

N/A

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

This could impact upon the sovereignty of New Zealand in terms of taking its own positions in international fora.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

NZW reiterates its earlier comments.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

NZW repeats its comments in relation to Questions 31 and 32.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

NZW does not place a strong priority on any of the reform options.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The Draft Aspirations document was not in a form upon which responsible comparisons could be based. NZW's submission on the draft Aspirations document has expressed significant concerns about the flawed process and content of that document.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

N/A

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 12:50:49**

About you

What is your name?

Name:
Damien Farrelly

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Horticulture New Zealand

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Horticulture New Zealand (HortNZ) advocates for and represents the interests of New Zealand's 5,000 commercial fruit and vegetable growers. The horticulture industry is valued at over $5.5b with over $3.6b in exports annually (FreshFacts, 2018).

The industry employs over 60,000 people, occupies some 130,000 ha of land and provides critical regional development opportunities in Northland, Auckland, Bay of Plenty, Hawke's Bay, Gisborne, Manawatu, Marlborough, Nelson, Canterbury and Central Otago.

New Zealand growers supply fresh and processed fruit and vegetables to domestic consumers, as well as exporting fresh products to discerning consumers in over 120 countries.

The horticulture industry in New Zealand is undergoing a period of significant growth through increased production of premium varieties for export and through exploration of opportunities to grow new fresh fruit and vegetables in the future. The protection of growers' rights will help facilitate this continued growth.

As HortNZ is an industry good organisation working in the interests of its members (commercial fruit and vegetable growers), we provide general comments and responses to some of the Food Standards Australia New Zealand (FSANZ) questions, where relevant to the horticulture industry.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

1. There is a tension between integrating multiple outcomes (i.e. Food Safety, Public Health, Sustainability etc) into one standard and focusing solely on Food Safety. The former is much bigger and more comprehensive, but in the long term should lead to better outcomes with an integrated system. The more straight-forward option is to focus on Food Safety, however all other areas need to be carefully considered as they are equally trying to regulate food.

2. The generally siloed and sometimes conflicting outcomes from various regulations which do not have food as the centre focus. As a result, there is less focus on food safety outcomes overall. In addition, regulations are becoming increasingly prescriptive which makes implementation extremely difficult, complex and costly with integration into an effective assurance system increasingly problematic also.

3. There is inconsistency between requirements for food imports, domestic consumption, and exports.

4. Any food which is not subject to a market driven food safety programme (e.g. Good Agricultural Practice certification in horticulture), or somehow fall through the cracks, pose a potential risk to public safety and credibility of the food safety system.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Horticulture New Zealand supports development of a common food policy which sets safe, healthy and sustainable food as the core objective and a central policy to which other policies can refer and connect if required. To us, one of the fundamental issues is that the sustainability of food production is regulated in a completely different way to safety, especially regarding implementation.

Environmental regulations are generally not focused on outcomes, have very prescriptive standards and processes, and lack an internationally recognised assurance framework which is common in food safety. This makes it almost impossible for food producers to integrate their regulatory obligations into their existing systems. The unintended consequences include less food, and/or less safe food given the complex and pressing issues regarding environmental sustainability.

A key consideration is the role of FSANZ in sustainability and how it might link with, rather than duplicate existing regulations and standards relevant to sustainability. The challenge is to ensure that the focus remains on food safety, while collaborating with other agencies to ensure that regulations in other areas do not negatively impact on food safety outcomes either by contradiction, distraction or allocation of resources.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In our view food policy should informed by a m■tauranga Maori framework that includes the concepts of kaitiakitanga and manaakitanga, recognising food provides for sustenance of mind, body and wairua.

NZ Food Safety are aware of the issues regarding indigenous culture, food production, and food preparation techniques, and have been proactively working with iwi in New Zealand on the production of safe and suitable food. An example of this work is the development of the ‘Te Kai Manawa Ora Marae Food Safety Guide’

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current system works however this option does not address the issues identified in the scoping paper.
• The current objectives and functions of FSANZ are not clear
• Lack of efficiency and effectiveness
• Lack of ability to adapt

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

No comment

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

No comment

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

No comment

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

As outlined in the regulatory impact statement, the benefits will be:
• Clarifying the objectives and functions of FSANZ
• Harmonising the objectives and functions with the joint food standards system
• Taking health, safety, economic prosperity and environmental sustainability of food into account. This should aim to integrate regulations and standards thus reduce the compliance burden. How this is done (e.g. collaboration with other agencies) is not yet clear, though it is important that food safety remains the top priority.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

It is currently very unclear what role FSANZ will play in sustainability. To be truly integrated food standards, FSANZ will need to have a broad definition of sustainability. The problem is that each component of sustainability is a massive undertaking to integrate even on an individual basis, therefore the limited approach is generally used in the short-term, which doesn't solve long-term sustainability issues.

The risk is that it becomes unwieldy, and the food safety focus becomes diluted. Overall a limited definition is likely to be more sensible, if FSANZ is to include sustainability.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

While many currently see sustainability to be a potential way to attain market premiums, very soon it is likely that sustainability credentials will be a market access requirement much like food safety is currently. The economic opportunities will come from the ability of Australia and New Zealand food businesses to meet these expectations before competitors, or by having better sustainability metrics compared to competitors. The opportunity loss from doing nothing may be the loss market access altogether.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

If standards are focused on outcomes, then the impact on standards may be minimal. Where FSANZ might come in is coordinating the development of guidelines for indigenous food businesses to meet the standard, in a similar way to what NZ Food Safety has done.

This role might be best left to local authorities in each country who are closer to the indigenous food businesses thus will be in a better position to understand their objectives and challenges.

Indigenous businesses are greatly increasing their agribusiness activities in NZ, and therefore will have an increasingly important role and influence on the food production system going forward, therefore their interests need to be carefully considered.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

There are a growing number of indigenous businesses in NZ, producing both conventional and traditional goods. The economic opportunities from traditional goods are unclear, however, it is currently expected to be a growth area.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

New pathways and more flexible processes for existing pathways will improve efficiencies thus reduce administration, assessments and costs.

The more flexible, less-prescriptive approach enables a tailored approach appropriate to the level of risk.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Yes, low risk issues or amendments could be delegated to the FSANZ board. Examples would be anything which does not have a direct impact on Food Safety (e.g. low-risk labeling requirements).

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

from users and relevant stakeholders, and a scientific evidence base, codes of practice and guidelines are a very effective way to strive for food safety outcomes and drive behavior change in an easily digestible format which has been developed with the end user in mind.

Risk assessments, minimum practice and best practice are most suited to codes of practice and guidelines. Limits are best set in standards or regulations.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

No comment

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

There appear to be benefits of regulatory sandboxes based on the experience of UK and Singapore, however it is difficult to determine the likely positive outcomes for the horticulture sector.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

no comment

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Support holistic regular reviews of standards.

Not supportive of FSANZ increasing intelligence- gathering roles which are more aligned with implementation in jurisdictions.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

No, this should not be legislated. HortNZ is not supportive of FSANZ having a primary role in intelligence gathering which is generally the role of jurisdictions. FSANZ could however establish data standards to enable better data collection, analysis, sharing and surveillance by jurisdictions thus reducing administration, complexity and improving food safety outcomes without having an operational role with food safety data management.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Increased collaboration will reduce costs, confusion, compliance and duplication.

The more intelligence led regulatory approach does not necessarily mean that FSANZ has a role in data collection and management as outlined in Component 4. It also means that FSANZ independence is compromised, therefore recommend that FSANZ instead acts based on intelligence from jurisdictions, industry and scientific data rather than based on its own data system.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

No. Putting a paywall on data generally prevents any use of data, even by those who could benefit most.

Do not support FSANZ becoming a data lake for Food Safety, and instead FSANZ should lead development of data standards to enable food businesses, industries and government agencies to make better decisions.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

A more streamlined board has some benefits, however the reduced representation would greatly outweigh the efficiency benefits given the wide set of stakeholders that FSANZ represents. This would have a negative impact on industry especially.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

HortNZ does not support an approach where FSANZ work with industry is offset through cost recovery mechanisms

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

It depends on the cost recovery model, but high costs will mean that there is still a significant barrier for industry and small to medium businesses to instigate changes. If the review successfully streamlines processes and significantly reduces costs, then a nominal cost for low risk changes will be more likely to be pursued.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Not currently

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

No comment

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No comment

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative for New Zealand, given New Zealand Food Safety effectively administers regulation in NZ, including incidents and recalls. FSANZ could help guide changes to NZ regulation and implementation, but does not require statutory power to do so.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No comment

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No for New Zealand. An additional layer to an already complicated system would likely reduce the effectiveness of NZ's recall and incident response. FSANZ does not need to have an operational role to support development of standards and support jurisdictions to set up their food recall and incident response systems.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

This will be positive if it meets its goal of providing more certainty and promoting a more consistent approach, especially with the development of interpretative guidance

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

There is no value in FSANZ taking on enforcement activities which are already undertaken by NZ Food Safety. Fundamentally this is duplication, and it is also outside of the scope of setting standards and developing guidance.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

FSANZ does not need to take on an enforcement role as this adds duplication. Instead, it can add value by serving a collaborative function to improve enforcement approaches and improve alignment across the joint food standards system.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Support alignment of legislation within Australian territories, but not as a function of FSANZ. Food Safety legislation in Australia and New Zealand needs to remain separate given they are two separate countries. While there is benefit in collaborating and having cross Tasman agreement in many areas, this does not require oversight from FSANZ as the primary regulator. Even if it was to be pursued, the regulatory changes required at all levels would be hugely significant, while implementation would also be extremely challenging.

HortNZ supports FSANZ performing a facilitation and collaboration role in regulation and implementation by developing standards and sharing knowledge and approaches across jurisdictions, who have the primary role in regulation, implementation and enforcement.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

No comment

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No comment

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2:
1. Component 1
2. Component 2
3. Component 6
4. Component 5
5. Component 3
6. Component 4 – HortNZ does not support apart from regular review of standards

Option 3:
1. Component 2
HortNZ does not support component 1 or component 3

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Option 2 is best aligned with the draft Aspirations for the Food Regulatory System

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

no comment

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 13:08:50**

About you

What is your name?

Name:
Virginia DeCourcy

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Australian Medical Association

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The AMA considers that the policy problems identified in this RIS are too heavily focussed on reducing regulatory burden for industry. This RIS seems to treat the presence of regulations as foremost, a hurdle for businesses, rather than as a necessary protection for consumers and health.

The crucial policy problem, which is not addressed adequately by the three proposed reform options, is that the current Food Standards Australia New Zealand Act 1991 (FSANZ Act) is not allowing the food regulatory system to meet its objective of protecting public health. This problem should be given equal consideration to broader reforms targeting enhanced efficiency and effectiveness.

A food regulatory system that successfully protects public health would see reductions in the rate of dietary-related chronic disease, along with controlling more acute threats like infectious and food-borne disease outbreaks. The current FSANZ Act, as well as the reform options proposed, do not place long-term health adequately at the core of the Act's remit, rather placing it in the Act's overall objectives and failing to extrapolate on the kinds of regulatory changes that would ensue.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current food regulatory system is not successfully protecting the long-term health of Australians. In 2015, dietary risks contributed 37,000 disability-adjusted life years to Australia's burden of disease – the highest contributor after tobacco and overweight/obesity. Since 2003, dietary risks have consistently been a lead risk factor for chronic disease in Australia. The prevalence of chronic diseases that are linked with poor diet (heart disease; stroke, high blood pressure, diabetes, and some cancers) remain at concerningly high levels.

As the Australian health system struggles to keep up with the demand associated with chronic disease complications:
• Australians are ill-informed about added sugar in the food products they buy;
• Children are inundated with marketing for unhealthy food and beverages;
• 70% of eligible products have refused to take on the health star rating system; and
• Processed food products with high levels of sodium, sugars and unhealthy fats are widely available, and often he cheapest and most convenient foods for many Australians.

Renewed regulation that places the health of consumers as its primary objective is clearly needed to protect Australia's health.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AMA is strongly supportive of expanding the definition of “protecting public health and safety” to include long-term health rather than focussing narrowly on acute health risks such as infectious and food-borne disease. The definition included on page 51, which includes protecting consumers from “preventable diet-related disease, illness and disability” is appropriate in this regard. The AMA would support updating the objective as a whole to “protecting and promoting public health and safety”, to give it an action-oriented preventive health focus rather than a reactive framing.

Importantly, the public health definition should be incorporated meaningfully into FSANZ’s remit when making decisions on food standards and other regulations, and should take clear precedence over industry profits, trade facilitation and competition. The inclusion of this definition will have a positive impact on public health if it allows FSANZ to more strictly regulate unhealthy food products; incentivises companies to produce healthier products; and provides consumers with better quality information about the products they are buying.

The AMA is also supportive of the inclusion of an explicit objective regarding food sustainability. So far this is an area that has sat outside the food regulatory system, and as mentioned in the RIS, this means it is difficult for consumers to compare products based on their environmental credentials. Improving the regulation of food products in terms of environmental sustainability would also have indirect positive impacts on public health. As acknowledged in the AMA’s Position Statement Climate Change and Human Health – 2015, “human health is ultimately dependent on the health of the planet and its ecosystem”. Environmental determinants, including air and water quality; biodiversity; temperatures; and extreme weather events, have significant health impacts and all sectors have a role to play in environmental protection.

The AMA is supportive of a greater recognition of Indigenous food expertise in the FSANZ Act and defers to the expertise of Indigenous-led organisations including NACCHO and IAHA in this regard. The AMA recognises the importance of cultural determinants of health for Aboriginal and Torres Strait Islander peoples, including the prioritisation of Aboriginal and Torres Strait Islander-led approaches to health and wellbeing.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Implementing Component 2 would certainly have negative public health impacts as it would result in substantially less oversight over food products. While the AMA supports an efficient and risk-based food regulatory system, streamlining processes for food businesses should never come at the cost of public health. The RIS itself notes that this option’s benefits relate primarily to business profits and operational savings for FSANZ, and that a “risk-proportionate processes could increase the risk of food-borne illness or adverse health outcomes for community”.

The AMA does not support the proposal to rely more heavily on industry self-regulation approaches, as past experience demonstrates that self-regulation is generally ineffective in public health terms. Noting that food and beverage businesses operate as profit-driven enterprises; any industry-designed regulatory pathway will only protect public health if there is an economic or reputational incentive to do so. Current industry-led regulatory schemes, including that for alcohol marketing, demonstrate that effective controls require an adequate level of Government or independent oversight to successfully protect public health.

The AMA is not supportive of this Component, but notes that if it is implemented, a robust monitoring and evaluation framework will be required to assess changes in adverse health outcomes and incidences of food-borne disease following regulatory shifts.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

As it is without precedent in Australia or globally, it is difficult to estimate the extent of the public health impact of a regulatory sandbox for food products, but it is likely to be negative. The AMA is highly concerned that Component 3 would result in a proliferation of unhealthy products that are not subject to any level of regulation, and as mentioned in the RIS a “greater risk of adverse outcomes for consumers” based on the lack of pre-market approval. Again, while the AMA appreciates the need for an efficient regulatory system, this should not come at the cost of public health. Real consumer markets, comprised of children and adults who expect that the food regulatory system will protect their health, is not the appropriate place to ‘test’ potentially harmful and dangerous products.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Enhancing FSANZ’s role in data collection and analysis would have largely positive impacts for public health. The ability to conduct a greater level of post-market surveillance of products and to track health outcomes against these could help to inform the public about the acute and long-term health risks associated with different products. Importantly, this Component should be accompanied by an increase in FSANZ’s capacity for public-facing science and data communication, to ensure that insights gained are shared with consumers for their benefit. It could also inform research from the academic sector on nutrition and health, and the relative impact of regulations on population nutrition outcomes. The AMA is supportive of this Component.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AMA is conditionally supportive of Component 5, which would enhance interfaces across the food regulatory system and improve FSANZ’s approaches to working with external stakeholders. Partnerships that allow the public health and academic sectors a greater level of access to information on food safety will have largely positive impacts for public health and consumers.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

It is difficult to comment on how reducing the size of the FSANZ Board would impact on public health without information about how the makeup of the Board would change as a result. The AMA is concerned that a smaller FSANZ Board would see public health expertise and perspectives reduced. Protecting public health and safety should be the Board's top priority, and the Board should retain adequate and balanced public health representation.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The AMA considers that the draft RIS is too narrow in focus and has not considered the kind of broad-scale, foundational reform that would see the food regulatory system shift to one that promotes and protects short- and long-term health as its highest priority. The current options are heavily focussed on how regulatory reform can reduce burden for industry, rather than considering how reform could better protect health. The aim of improving public health is only truly included in Option 2, Component 1, rather than being a guiding principle of the entire reform process. Including a more wholistic definition of public health in the FSANZ Act's objectives is a positive step, but is not sufficient to reorient the food regulatory system towards the proactive health focus which is needed to improve long-term health outcomes in Australia.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

The AMA's highest priority, along with other public health stakeholders, is that protecting long-term health outcomes is successfully incorporated into the FSANZ Act. The current food regulatory system is reactive and focussed too heavily on acute disease threats. As mentioned, chronic conditions linked to dietary patterns place a much greater burden on Australia's health system than infectious and food-borne disease. In the current RIS, this priority is best reflected in Option 2, Component 1.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The AMA does not think that the draft RIS accurately reflects the intent of the draft Aspirations for the Food Regulatory System. The aspirations have a stronger focus on public health, and strive for a collaborative stakeholder engagement system rather than one heavily weighted toward industry concerns. Aspirations such as “better engaging public health and consumer advocacy bodies to deliver key messages”; “promote and embed a safe and healthy food culture across the supply chain”; and “introduce formal structures to better enable expert advice to guide the system” are not consistent with any of the suggested reform options in this RIS and are unlikely to be achieved under any of the three options. The AMA would support a fourth reform option that focusses in the first instance on how the FSANZ Act can better support public health; including by setting clear and accountable criteria for long-term health protection; instituting straightforward channels for public health stakeholders to raise concerns with food products or standards; and increasing FSANZ’s capacity to evaluate the impact of decisions on public health outcomes.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 13:37:33**

About you

What is your name?

Name:
Philip Wescombe

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Industry Advisory Group for the New Zealand Food Safety Science and research Centre

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

It is important to note that this submission is from the Industry Advisory Group (IAG) for the New Zealand Food Safety Science and Research Centre (NZFSSRC) and does not represent the views of the NZFSSRC itself. The IAG comprises members and associate members of the NZFSSRC and has representatives from the Dairy, Seafood, Poultry, Horticulture, Meat, Testing Laboratories and Grocery sectors mainly with a focus on food safety.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The stated policy problems generally address our concerns with the regulatory framework presented by the FSANZ Act and the operation of FSANZ under the Act. IAG largely agrees with the description of the problems but IAG has some concerns relating to:

• Policy Problem 1 – Public health protection; food sustainability; legislated processes for changing food standards and decision-making
• Policy Problem 3 – Food recall; enforcement; food-medicine interface; extending influence internationally.

These concerns are noted within this submission in the responses to the questions indicated.
In previous consultations concerning the FSANZ Act, we also stressed the importance of defining “public health” separately from “food safety” which is the paramount objective. We also comment later in this submission (Response to Question 11) on the importance of including “trade” as a principal objective and, in a hierarchy, ranked equally to the defined public health.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

We do not support a role for FSANZ in relation to sustainability with the concern that it would be an unnecessary diversion of resources away from food safety for a concern that is addressed by other agencies in both Australia and New Zealand. This does not mean it cannot participate in discussions and responses (such as with PFAS (per- and poly-fluoroalkyl substances)) but it should not have a formal role.

The New Zealand Ministry for Primary Industries (MPI), Ministry for the Environment (MfE), Department of Conservation (DoC) and Ministry or Business, Innovation and Employment (MBIE) all have roles in the area of sustainability. Australian Government agencies are equally involved in sustainability.

Food companies are generally embracing sustainability in their operations to a greater or lesser degree partly as a good corporate citizens and partly in response to consumer expectations.

In the event that FSANZ was to have a role in sustainability, this should be narrowly defined and very clearly only defined to actual food safety issues relating to sustainability practices.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In New Zealand context, the Crown's obligations to the Treaty of Waitangi/Te Tiriti o Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasizes the role of the public service in supporting the partnership between M■ori perspectives and the Crown under the Treaty of Waitangi and the importance of incorporating M■ori perspectives and M■tauranga M■ori (M■ori system of knowledge). This mandate, by principle, includes any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The status quo has become outdated and is often not able to rapidly respond to changes in technology which has impacts both on the ability of industry to innovate in the food space and in responding to changes in food safety data for particular products. There are also many instances where standards are unclear but have not been able to be updated in a timely fashion (for instance the Infant formula standards review). Resourcing of FSANZ currently does not enable the timely delivery of the status quo FSANZ goals so it is important to streamline procedures and rethink the goals and mechanisms of standards setting.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

IAG responds from an industry perspective that the current arrangements are creating significant and compounding loss of competitiveness. The most recent example of this is in relation to Application A1155 concerning human milk oligosaccharides (HMOs). The particular HMOs that were the subject of Application A1155 have been approved in over 70 jurisdictions globally with none of the time limits or constraints that Food Ministers decided were necessary for Australia and New Zealand. Ministers were well aware of the impact on innovation, competitiveness and trade of their decisions The uncertainty that this introduces has an incalculable cost on competition and economic growth.
The legislated processes for changing food standards and decision-making are inflexible, costly and anti-innovation contributing to a stifling of economic growth and the expansion of the Australian and New Zealand food industry.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

IAG is generally supportive of this component but strongly requests that facilitation of trade is added to FSANZ objectives. Trade goals are an essential priority to include as an objective so that we don't develop peculiarities in food standards for our region that make trading internationally more difficult and to ensure that our manufacturers can maximise their competitiveness. The goal could be defined to ensure there is no duplication of responsibilities across MPI's responsibilities for instance. The key concern of industry being a cohesive consideration of the broader effects of standards on market access globally.

With regards to sustainability, we strongly suggest that this is not included as an objective for FSANZ as this will result in a dilution of the resources focused on food safety by FSANZ (see response to question 12 below for further comments)

The Draft Regulatory Impact Statement lists several elements that could be amended for which there are no questions and we comment as follows:
Aligning wording around public health protection across section 3 and section 18 – IAG agrees with alignment but considers that food safety should always be the highest priority and that goals such as "promoting public health" should not be permitted in any changes as these have the potential to be politically manipulated/driven and there are other avenues to pursue such goals.

We also consider that trade goals should be given equal priority to public health (appropriately defined) after food safety. For this reason, we support wording that clearly separates food safety from public health objectives. This also acknowledges the existing hierarchy of objectives in the FSANZ Act currently.

Expanding the objectives of FSANZ to recognise trade as a core goal – IAG strongly supports such an expansion and, as noted above, having separated food safety as the prime objective, would list public health protection and trade as subordinate but equal objectives.

Establishing criteria to be met for Ministers to request a review – IAG strongly supports setting criteria that Ministers must meet before requesting a review.
Amending Act to ensure FSANZ has the breadth of statutory functions required to effectively deliver on its objectives – IAG considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, a role defined for FSANZ regarding food fraud, if this were to proceed, would need to ensure minimal overlap with competition watchdogs and enforcement agencies.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We do not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues. Many food companies are embracing sustainability in their operations. IAG considers it an unnecessary diversion of resources for FSANZ to also have a formal role in sustainability.
In the event that FSANZ was to have a role in sustainability, this should be very narrowly defined and very clear and related only to sustainability issues that have a direct impact on food safety (which should already fall under the FSANZ objectives for food safety).

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

IAG believes that economic opportunities for Australian and New Zealand industry from sustainability will be captured over time without FSANZ's involvement but rather from broader drivers such as consumer demand, climate change legislation etc. An involvement of FSANZ could generate costs through diverting scarce resources and focus from food safety, public health protection and trade objectives.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

IAG considers other stakeholders to be better placed to respond to this question due to the scope of IAG being generally NZ-focused.
However, one consideration that IAG would recommend is the provision of clearer guidance from FSANZ on how to verify that novel products, some potentially derived from indigenous, ingredients are safe. The current guidance is convoluted and difficult to navigate creating a barrier to innovation in the indigenous food space. Improved guidance on approaches to verifying food safety in a manner that aligns with indigenous values would also be high priority and of value in New Zealand's situation in particular.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

IAG is generally supportive of the elements in this component.
Risk could drive processes in relation to applications and proposals – It is not clear how this proposal would operate but approaches that would streamline the application and proposal process are strongly supported in principle.
Creation of new pathways to expedite low-risk amendments to food standards – as with the previous proposal, it is not clear how this proposal would operate but approaches that would expedite amendments to food standards are supported in principle. 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.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

IAG strongly supports decision-making being delegated to the FSANZ Board. Examples would include the likes of food additives, processing aids or low risk labelling and composition matters should be delegated along with minor adjustments to Standards and technical amendments.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

IAG considers Codes of Practice or Guidelines would be beneficial but would want to see these as collaborative developments featuring consultation provisions. We would also support partnering with other industry and non-industry agencies that might have expertise in the subject area to contribute to development. Some areas that could benefit from Codes of Practice or Guidelines include: microbiological measures and processes related to novel foods and nutritive substances, guidelines around natural toxin control for bivalves is another area identified by IAG members.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

IAG is generally supportive of this component but more detail is needed to assess this proposal.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

One area that might utilise regulatory sandboxes could be any relevant work emerging from the New Zealand Food Safety and Science Research Centre (NZFSSRC) which has a platform for collaboration between MPI, FSANZ, Research providers and the Food Industry . Another alternative might be to allow product to be brought into the market while a request for an urgent application is processed.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

IAG is generally supportive of this component but there are reservations as noted in the response to the following question

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

While the IAG is generally supportive of FSANZ collecting data that could be consolidated and communicated we are not certain this needs to be legislated.
This Component also proposes that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards. IAG supports FSANZ being resourced to undertake reviews of food standards but that the standards to be reviewed should be prioritised to ensure standards are not reviewed for the sake of review – it should not be a 'tick the box' approach across the Australia New Zealand Food Standards Code.
Equipping FSANZ to develop strategic relationships with New Zealand food safety research entities is supported.
IAG is cautious about positioning FSANZ to be the guardian of key food safety databases. Further information about how this would be collected and to what use it would be put is required to clearly determine the role or not of FSANZ in this area.
In relation to FSANZ collating and creating consumer-facing food safety education materials, IAG would support this if FSANZ receives additional resourcing sufficient to cover this activity in addition to its other activities.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

NZFSSRC is generally supportive of this component if it was independently resourced.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

IAG considers that access to data should be free of charge. If charges were applied, this may lead to issues around ownership and could be a disincentive to external parties providing FSANZ with data.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Because the scope of FSANZ's work is very broad IAG believes it warrants a Board of 12 members to function properly. Cost savings of reducing the board size would be minimal compared to the benefits of having a wide set of expertise to draw on.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

IAG does not believe the Act should provide for more of FSANZ's work with industry to be offset through cost recovery mechanisms

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The current costing system means that sensible needed changes to the Code are not being made due to the expense and time commitment required to enact a change. Cost-recovering for a wider set of activities seems would likely be another barrier to getting things done.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative for New Zealand. This is a role MPI plays and New Zealand members of IAG are not supportive of FSANZ taking this over with all the disruption this would cause in the industry.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand.
In Australia, some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions present as significant barriers to industry trying to protect consumers.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

IAG is generally supportive of this component and agree that FSANZ could reduce interpretive uncertainty through the provision of greater non-binding guidance on food standards – including statements of intent for food standards and binding rulings on aspects of the standards that have proven to be problematic/interpreted differently.
IAG is also supportive of FSANZ being resourced to update and maintain industry guidelines.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Even though the positions Australia and New Zealand take on the international stage in relation to food related matters are often similar, this is not always the case. Australia and New Zealand are two separate countries with differing issues (as evident with respect to different issues raised with the World Trade Organisation (WTO) including on issues in dispute between New Zealand and Australia). The two countries are competitors in the global market. Both countries need their own voice in the international arena. Other reasons against this proposal include:
• it is beneficial to have two nations advocating for a common position rather than one;
• positions are generally respective government positions and loss of sovereignty is a significant concern;
• different nations take on different roles in international fora that reflect particular interests and strengths.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

We would strongly recommend that trade be included in both to emphasize the importance of trade impacts as a consideration when setting standards. This was not mentioned in the Aspirations for the Food Regulatory System.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:11:45**

About you

What is your name?

Name:
Dianne Lowry

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Dairy Goat Co-operative (N.Z.) Ltd ('DGC')

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Dairy Goat Co-operative (N.Z.) Ltd, (abbreviated as 'DGC'), is a New Zealand manufacturer, developer and exporter of premium consumer packaged nutritional powders primarily for infants and young children. It is a leading New Zealand exporter, and services over 30 international markets via its marketing partner and joint venture relationships. The markets are located primarily in Asia, Europe and Oceania.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The three key policy problems identified in the RIS cover the broad range of issues raised in previous discussions including the key issues of concern to DGC: lack of timeliness regarding the processing of proposals and unpaid applications and insufficient focus on supporting innovation and facilitation of food exports.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Claims relating to the environmental sustainability of products is an example but this issue is already being managed. The discussion paper mentions "industry can make unregulated claims regarding the environmental sustainability of a product" (Page 27). This statement is incorrect. As mentioned in the discussion paper, the Commerce Commission in New Zealand has a role in overseeing environmental claims. The Commerce Commission has in fact issued guidelines to industry on making environmental claims and it is our understanding that the Australian Competition and Consumer Commission (ACCC) has a similar role in Australia. There are numerous other government departments dealing with aspects of sustainability.

DGC does not support FSANZ having a legislated or formal role in relation to sustainability. Issues stemming from initiatives to improve sustainability that have

potential food safety and/or suitability consequences will be dealt with by FSANZ in fulfilling their core food safety and suitability objectives.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

DGC's product range is limited in scope to milk-based nutritional products for infants and young children. We acknowledge the indigenous culture and food expertise in New Zealand and Australia but we have no examples or issues to offer relating to our product scope.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The FSANZ Act is 30 years old. Maintaining the status quo would represent a lost opportunity to update objectives and operations to be better suited to the current and future food safety/suitability environment for both countries.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The status quo is unsatisfactory. The key risks have already been realised and are compounding with time: protracted timelines for regulatory changes in response to new expert recommendations (for example from Codex Alimentarius) and innovations; reduction in competitiveness and stifled economic growth of the New Zealand and Australian food industry.

As an example, the proposal P1028 to review the infant formula requirements in Food Standard 2.9.1 was partly motivated to better align with the Codex Infant Formula standard when it was updated in 2007 after a comprehensive review. An administration assessment proposal was published in 2013 which set out a time frame for gazettal of revised requirements in 2018. But, here we are in 2021, still awaiting the first call for submissions. The impacts of this drawn out time frame are multifaceted and significant but difficult to quantify. The legislated processes for changing the food standards are inflexible and costly. More agile, risk-proportionate processes are needed.

Application A1155 concerning human milk oligosaccharides (HMOs) is another example. The particular HMOs that were the subject of Application A1155 have been approved in over 70 jurisdictions globally without the time limits or constraints that Food Ministers decided were necessary for Australia and New Zealand.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

DGC does not hold data that would help to quantify the cost of delays when bringing products to market through the current process but can confirm that lost opportunity costs for potential export business are significant.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

DGC is not aware of any costs or benefits which have not been considered.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Not applicable as DGC has not identified any additional costs or benefits.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See responses to Questions 4-6 above.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

For jurisdictional regulators - not applicable to DGC.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

There are a range of suggested amendments under component 1 of option 2. DGC supports most but not all of these. We support facilitation of trade being included in FSANZ objectives but not sustainability.

We note that the Discussion Paper lists several elements that could be amended for which there are no questions including:

Aligning wording around public health protection across section 3 and section 18 – DGC agrees with alignment but advocates food safety be the highest priority. After food safety, we consider that trade goals should be given equal priority to public health.

Expanding the objectives of FSANZ to recognise trade as a core goal –DGC strongly supports such an expansion and, as noted above, having separated food safety as the prime objective, would give equal weighting to public health protection and trade as subordinate objectives.

Establishing criteria to be met for Ministers to request a review – DGC strongly supports setting criteria that Ministers must meet before requesting a review.

Amending Act to ensure FSANZ has the breadth of statutory functions required to effectively deliver on its objectives -DGC considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, if a role is defined for FSANZ regarding food fraud would need to ensure minimal overlap with completion watchdogs and enforcement agencies.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

DGC does not support a broadening of FSANZ objectives to include sustainability.

We consider such a broadening of objectives is unwarranted. Sustainability is an area sufficiently regulated by other government organisations and we would not like to see resource within FSANZ diverted into this area. Food safety and suitability issues arising from initiatives to improve sustainability (for example evaluation of contaminants from recycled packaging) will come under the remit of FSANZ in meeting their core objective of food safety and other existing objectives negating any need for an objective specific to sustainability.

In the event that FSANZ was to have a role in sustainability, this should be narrowly defined and very clear.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

DGC does not believe that the inclusion of 'sustainability' in the FSANZ objectives would deliver economic opportunities for industry based in New Zealand and Australia, but rather that this could be counterproductive. Diversion of resources within FSANZ is a core problem with the status quo leading to lack of timeliness. Extending FSANZ objectives to include sustainability in the future is likely to exacerbate this issue and the associated lost opportunity costs incurred by industry. Also, we see a risk of undue emphasis on environmental aspects (planet) without adequate balance on the economic (profit) and social (people) aspects of sustainability.

Businesses do not need FSANZ involvement to give impetus to sustainability initiatives as there are already powerful forces pushing changes. These include, but are not limited to: consumer and investor demand, constraints on resources and climate change legislation.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

DGC considers other stakeholders to be better placed to respond to this question due to the scope of DGC business.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Not applicable to DGC.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

DGC strongly supports a more risk proportionate approach and streamlined processes which are clearly set out and enforced consistently.

We offer the following comments on elements not covered by questions:

Implementing a decision-making tool to determine instrument that can most appropriately deal with the identified problem – we support the development of such a decision-making tool.

Risk could drive processes in relation to applications and proposals – It is not clear how this will be implemented but DGC strongly supports in principle approaches that would streamline application and proposal processes. We agree that risk is an appropriate driver for different processes to allow for a flexible approach.

Creation of new pathways to expedite low-risk amendments to food standards – as with the previous proposal, it is not clear how this proposal would operate but approaches that would expedite amendments to food standards are supported in principle. Industry self-substantiation should be considered in this regard.

However, DGC does not support automatic adoption of selected overseas standards without any consultation step. 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 – again it is not clear what such an additional pathway might comprise but in principle we support new approaches that would expedite bringing products to market.

Abolition of the pathway for high level health claims – DGC is generally supportive of abolishing the pathway for high level health claims but seeks reassurance that existing high level health claims in the Food Standards Code will be retained and that opportunity for new high level health claims in the future will not be lost.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

DGC strongly supports inclusion of a provision permitting the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making. We envisage that such decisions could include:

• Low risk labelling and composition
• Low risk approvals of additives and processing aids.

There needs to be a clear decision-making framework to determine where such delegation is appropriate. If this provision is just applied on a case-by-case basis it is unlikely that the improvement sought in efficiency would be achieved.

To successfully implement delegated decision making it is critical that all decision-making bodies have the same objectives and apply the same criteria in reviewing food regulatory measures. A1155 serves as a recent example of the outcomes which can ensue when there is no such alignment. Significant unwarranted time and resources were consumed due to FSANZ having regard to different criteria from that of the Ministerial Forum.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We have found guidelines on labelling to be useful and support the provision of self-assessment protocols related to such areas as heath claims, novel foods and nutritive substances.

We note the recent updated, "Food Industry Guide to Allergen Management and
Labelling," recently released by the Australian Food and Grocery Council and the Allergen Bureau. We recommend that FSANZ explores collaborative approaches to developing Codes of Practice and guidelines with industry and non-industry agencies with expertise in specific subject areas. In addition to gaining additional resources to assist with development this 'cross-pollination' of skills and experience could have other benefits for the parties involved, for example increasing regulator awareness and understanding of practical issues regarding the implementation of regulatory measures. Consultation on drafts before finalisation is also recommended.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

It is challenging to quantify this burden. Compiling the required evidence base to support a comprehensive risk assessment requires a multi-disciplinary approach and involves considerable time input from staff and external advisors with expertise covering product development, nutrition, processing, quality assurance and scientific and legal fields. Costs for human clinical trials, where required, are typically in excess of $3 million of dollars.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This is challenging to quantify although the cost of paid applications provides a baseline on which to build. The costs incurred by industry of FSANZ not recognising and adopting international risk assessments are wider than simply the cost of compiling the required evidence to support a comprehensive risk assessment by FSANZ and preparing and submitting a paid application. Costs incurred also include lost opportunity costs associated with delays in bringing new or refreshed products to market and reduced ability to compete internationally.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The concept of ‘regulatory sandbox’ appears to be potentially positive but more information on how this would work in practice is needed for assessment, including what happens post sand-pit.

DGC considers that further development of this concept is warranted but that it should be a secondary priority to other amendments to the FSANZ Act that have the opportunity to deliver benefits with greater immediacy and certainty.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

It is difficult to provide examples without better understanding of the potential process. However, it may be appropriate to test market or conduct social research for new products or for products produced using new technologies before deciding if legislative changes are warranted to allow commercialisation.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Neutral

Indicative costs and resource allocation is needed in order to evaluate if pursuing this option will deliver positive or negative outcomes.

We have concerns about the potential for duplication of functions carried out by existing intelligence gathering agencies within both countries. Our preference is for FSANZ to better leverage intelligence from existing intelligence gathering agencies by fostering new approaches to working with other agencies as proposed under component 5.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

DGC supports FSANZ collecting data that could be consolidated and communicated in principle but questions if legislation is needed in this regard.

Component 4 also proposes that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards. While supportive of this aspect DGC advocates for prioritisation mechanisms to be developed and applied to ensure that standard reviews are not undertaken when they are not warranted.

DGC considers that more information and research is needed about the proposal to position FSANZ to be the guardian of key food safety databases. All jurisdictions currently maintain food safety databases. New Zealand data is collected under statute and unlikely to be shared.

Both countries currently maintain composition databases and compile nutrition data and there could possibly be benefits for some consolidation in this area.

In relation to FSANZ collating and creating consumer-facing food safety education materials, DGC considers that this should only proceed if additional resourcing is provided to cover this activity. It may also be appropriate for this activity to limited to Australia.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

We believe that fostering new approaches to working with other agencies could result in positive outcomes for Australian and New Zealand industries, regulatory agencies and consumers if appropriately managed. We recommend the development of appropriate frameworks for knowledge and information sharing that prevents duplication of work, informs decision making and increases alignment on prioritisation.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

DGC considers such information should be provided on an open access basis. If charges are applied this may lead to issues around ownership and could be a disincentive to external parties providing FSANZ with data.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Aspects of this component are potentially positive with respect to more efficient and effective governance but this is balanced by potential negative outcomes for New Zealand Inc and New Zealand stakeholders.

DGC supports legislative amendment to support more efficient and effective governance such as streamlining nomination and appointment processes for board members. We do not think that legislative change is needed with regard to how meetings are held. A mix of virtual and face-to-face meetings, as was the practice with telecons prior to COVID 19, is an efficient approach.

DGC does not support a smaller Board especially if this compromises the Board's ability to address challenges specific to New Zealand. Board travel costs are minimised if most meetings are held virtually.

We are surprised at the inclusion of the proposal for investment into business solutions that might help FSANZ staff work more efficiently as, from our perspective, such investment should not require legislative amendment.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Key risks include:
• Some existing functions not being reviewed and streamlined, resulting in continuing delays in carrying out core FSANZ functions.
• Added functions for FSANZ not being adequately resourced. This will exacerbate the slowness of approval and standard development processes.
• From an industry perspective there is significant risk posed by component 2 not proceeding. There is also a risk of inadequate and/or inconsistent enforcement activities across jurisdictions undermining the application of Component 2.
• Implementation generating unexpected consequences. This risk cannot be completely eliminated but we recommend that the potential risks/issues identified in our and other stakeholder responses are considered and addressed before legislation is drafted to help mitigate this risk.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Trade considerations have not been significantly mentioned in this RIS. In our view it is important to consider the costs and benefits to Australian and New Zealand food exporters associated with many of the components described in this RIS as both Australia and New Zealand are major food exporters. The considerations include credibility of FSANZ with overseas competent authorities; increased alignment with other national/regional risk assessments and standards; and competitiveness with global competitors in international markets.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

It is challenging to quantify the considerations listed above but non-alignment of food standards with those in key markets results in significant costs to industry. Reduced competitiveness is a real issue with significant economic impacts.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

DGC does not believe the Act should provide for more of FSANZ work to be cost recovered. There is a strong risk that this would disadvantage small to medium enterprises.

DGC does not believe the provision of interpretative advice should attract fees since this would mean unequal access to the legal system.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Cost-recovering from industry for a broader range of activities would be negative. It would exacerbate the existing disparity between large and small to medium businesses in terms of access to activities.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

To date DGC has not made an application to FSANZ but actively engages in consultations on applications and proposals relevant to DGC's scope of interest.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The most significant barriers are:
• The cost of preparing applications and the fees associated with paid applications
• The uncertainty that unpaid applications will be processed and the timeline this may take.
• Responsibilities between and within agencies are not always clear.
• Lack of regulator knowledge around technical and practical aspects of manufacturing and exporting.
• Significant time lags between consultations on proposals like P1028. There is a lot of resource put into providing input on such proposals and continuity is lost due to big time gaps often leading to work done previously needing to be done again to be across the topics under discussion (for example due to changes in personnel in the interim).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

We are more likely to engage more frequently and efficiently with the food regulatory system if new pathways are introduced as proposed in this RIS, particularly in relation to low-risk amendments to food standards.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We view this as negative for New Zealand.

DGC does not support FSANZ co-ordinating food incident and food recall responses in New Zealand. The current New Zealand food recall generally operates well and we seek for this function to continue to be managed by New Zealand for New Zealand.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No. As per our previous comments, New Zealand already has a regulatory recall system which works effectively

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

DGC is generally supportive of this component and agrees that FSANZ could reduce interpretive uncertainty through the provision of greater non-binding guidance on food standards, including statements of intent for food standards. However, we feel more information is needed to evaluate the proposal to introduce binding rulings.

DGC is also supportive of FSANZ being resourced to update and maintain industry guidelines but encourages collaboration with external agencies as per our response to Question 18.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

No.

There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We note that the EU which has regional food standards does not undertake joint enforcement across nations within the EU but leaves this to each sovereign nation.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No. The jurisdictions are best placed to answer this question.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Australia and New Zealand are two separate countries which compete in the international marketplace, have different challenges and different perspectives on issues that arise internationally. Both countries need representation on the international stage on food related matters.

We see mutual benefits to both countries from separate representation:
• Each country retains its sovereignty and individual identity on the international stage
• When Australian and New Zealand have common positions on issues it is beneficial to have two nations advocating for this common position rather than than one;
• Australia and New Zealand are able to take on take on different roles in international fora that reflect their particular interests and strengths.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Refer to our response to Q29. Trade issues and benefits to exporters, Australia Inc and New Zealand Inc do not appear to have been adequately considered.

There would be substantial costs involved in establishing a bilateral enforcement function for FSANZ. Trans-national boundary law enforcement is generally reserved for entities like the International Court of Justice, the International Criminal Court and the International Tribunal for the Law of the Sea. These are formed by treaties between nations or under the authority of an international organization like the United Nations. We consider that it is impractical to consider the establishment of a trans-Tasman enforcement function due to the many legislative changes that would be required. The cost involved would be prohibitive.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

None. They are all public good activities.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

We do not have any additional policy approaches to put forward at this time.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Of the reform options presented we consider that Option 2: Component 2 (to facilitate risk-based approaches to developing or amending food regulatory measures) is the highest priority.

The next highest priority is Option 2: component 1. Under this reform option we eagerly anticipate facilitation of trade being added as a core objective for FSANZ.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The key omission for aligning the Aspirations for the Food Regulatory System with this RIS is facilitation of trade. In the pictorial summary document recently posted on the Aspirations, trade was not mentioned at all.

DGC advocates that facilitating and strengthening international trade should be a priority Aspiration of the FSANZ joint food standards system. Harmonisation of terms, definitions and standards with other markets promotes consistency between the Food Standards Code and other regulated markets facilitates export trade and has the potential to alleviate regulatory/trade barriers.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:13:09**

About you

What is your name?

Name:
Food Safety Standards and Regulation Unit, Queensland Health

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Queensland Government

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

This submission is a joint response by Queensland Health, the Queensland Department of Agriculture and Fisheries, and Safe Food Production Queensland, which are the main Queensland Government agencies involved with food policy and enforcement of food standards. The submission provides technical advice and comments at officer level and does not represent a Queensland Government position.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Policy issues relating to the food regulatory system are being considered as part of the program to modernise the system. The regulatory impact analysis should be considered in light of the outcomes of this work.

Problem definition and options do not address two draft Aspirations for the food regulatory system:
• Improving the way decisions and outcomes are communicated (second part of draft Aspiration 2)
• Informed, engaged and accountable stakeholders (draft Aspiration 3).

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The scope of the food regulatory system, including whether food sustainability should be included, needs to be considered as part of the review of the Food Regulation Agreement. This should occur prior to any potential amendments to the FSANZ Act to ensure alignment of the Act and the future system.

Examples of where the food regulatory system has indirectly considered food sustainability issues are:
• Extraneous residue levels for agvet chemicals are defined in the Food Standards Code (Standard 1.4.2 and Schedule 21).
• Natural toxicants (Standard 1.4.1 and Schedule 19)
• Sustainability has been considered by FSANZ when assessing some applications. An example is Application A1186. which sought permission to add soy leghemoglobin to plant analogues (burgers) to align their sensory characteristics more closely with meat. A justification provided for A1186 was that it provides choice for individuals who chose to limit their intake of animal products for environmental reasons.
• Applications for genetically modified crops, where the plant has been developed to have herbicide tolerance (may allow more efficient use of herbicides), protected from insects (reduce use of pesticides) and drought tolerance (less water required).

Food sustainability has also been considered in public health policies and guidance, such as:
• The 2013 Australian Dietary Guidelines consider food, nutrition, and environmental sustainability. The focus is on individual/household behaviours such as avoiding overconsumption, choosing foods that reduce environmental impact, reducing food waste, conserving water, storing food appropriately, eating fruit and vegetables when in season. Environmental consequences within the food system from paddock to plate are also highlighted. These dietary guidelines are currently under review, and food and environmental sustainability could be captured in the subsequent version.
• The National Obesity Strategy consultation report (November 2020) highlights stakeholder views about sustainability and the environment. Some stakeholders raised the impact of climate on what food can be/should be grown and farmed in the future; and concerns that packaged/processed foods will continue to emerge over fresh options. Sustainability was also considered a factor in food purchases and consumption by young people.

However, palm oil labelling, relating to environmental sustainability, was considered to be an issue for consumer affairs and fair trading, rather than the food regulatory system.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The traditional taking of seafood by an Aborigine or Torres Strait Islander under Aboriginal tradition or Island custom is recognised in the Queensland Food Production (Safety) Regulation (2014) and specifically excluded from the seafood scheme in the regulation.

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 People.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The food regulatory system is not broken but can be improved. Option 1, the status quo, closes the opportunity for improvement.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The key risk to all stakeholders is that without amendments to the FSANZ Act, FSANZ may not be able to effectively support and facilitate the objectives and processes of a modernised food regulatory system.

Specific risks include:

• Applications, proposals and other work are not prioritised in a way that allows higher-impact work with wider reaching benefits to be progressed in a timely manner.
• Time required for government departments to review low risk applications and proposals and brief relevant Ministers
• 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 is finalising the development of a small 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 (SMEs) 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 SMEs to identify the information they need to include a food label.
• Without changes to legislated processes and resourcing, progression of complex Proposals in a timely manner appears unlikely to improve. Therefore, changes to the food supply (specifically food composition, labelling and marketing) which support healthy eating behaviours and prevention of longer-term diet-related chronic disease will continue to be slow to be realised. Without a healthier food supply, improvements in Queenslanders' health and wellbeing may be difficult to achieve. The burden of preventable disease related to poor diet would continue to impact the government, the economy and society.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

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.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

• A benefit for governments under Option 1 is that there will be no additional costs required to change processes or procedures to reflect new or amended provision of the FSANZ Act. These costs may relate to operational, administrative or communication activities.

• 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 Commonwealth 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 rather than on-site inspection could result in cost savings for government and business.

With respect to the last point, Dairy RegTech has been cited on page 43 of the draft RIS as being an example of a highly sophisticated approach to detecting risk and strategic monitoring and compliance. Safe Food Production Queensland, in addition to Dairy Food Safety Victoria, was involved in the development of this approach and therefore should be acknowledged.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

For governments, following significant stakeholder engagement, Option 1 will have an adverse effect on the reputation of the food regulatory system, which will reduce the willingness of stakeholders to engage in further consultation activities.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

• Queensland Health and local governments have shared responsibility for the enforcement of the Food Act 2006.

In Queensland Health, resources are shared between the Health Protection Branch and public health units in Hospital and Health Services. The Health Protection Branch currently employs 8 full time equivalent staff or FTEs. The Hospital and Health Services and currently employ 150 staff that are authorised under the Food Act, however, undertake various functions under numerous pieces of legislation relating to environmental health and health protection activities therefore quantifying the commitment to food regulation cannot be specifically determined. Staff from Health Protection Branch also contribute to the development of food standards. These resources are paid by the State Government and not by any service charges.

Queensland local governments employ/contract staff (mostly environmental health officers) that are responsible for a number of pieces of pieces of legislation and regulatory functions. Their work on each will fluctuate as demand requires. It is estimated the proportion related to food regulation work is 188 FTE. This figure does not include support staff dedicated to administrative and executive positions, nor staff dedicated to complaints, plumbing, building and other planning approval activities related to food businesses. Some local government costs for food safety standards work are offset against revenue from food business licenses under the Food Act 2006. Please note, the number of local government FTE dedicated to food regulation work in Queensland is not directly comparable to most states and territories, because public health units in Hospital and Health Services enforce Chapters 1 and 2 of the Food Standards Code whereas in some jurisdictions these two Chapters are enforced by local governments.

The time dedicated to food regulation fluctuates and needs to consider surge capacities, again making it difficult to quantify resources. For example, greater numbers of staff and expenses are dedicated to incidents such as COVID-19, intentional tampering of food and foodborne illness outbreaks.

• The primary function of Safe Food Production Queensland (Safe Food) is to implement, monitor and enforce compliance with food standards, as well as contributing to their development. Safe Food operates under a cost recovery model, has an operating budget of approximately $6 million per annum and currently employs 33 FTE.

• The Department of Agriculture and Fisheries (DAF) administers the Food Production (Safety) Act 2000 with Safe Food. DAF is not a regulatory agency in the context of food safety, except for some specific functions such as AgVet chemicals.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

It is essential that any amendments to clarify FSANZ's objectives and functions are aligned with, and do not extend beyond, the role of the modernised bi-national food regulatory system and align with the operations of that system. Also important is that any new definitions do not conflict with those in jurisdictional legislation unless prior agreement has been reached with jurisdictions to amend their respective legislation to reflect the new definitions.
The proposed legislative changes in Option 2 | Component 1 to clarify the objectives and functions of FSANZ are broadly supported, particularly:

• defining 'protecting public health' to ensure that longer term health outcomes (including prevention of diet-related chronic disease and conditions) are properly considered within FSANZ's remit.
• Inclusion of 'an internationally competitive food industry' and 'a sustainable food industry' as objectives (but secondary to protecting public health); and
• harmonizing the criteria used by FSANZ and the Food Ministers' Meeting to assess new regulatory measures (although noting that this does not align with the Conran Review recommendations that Ministers' roles should not be enshrined in legislation).

There are reservations about including food sustainability as an objective of FSANZ when developing or reviewing food regulatory measures. Food sustainability relates to clause 14 of Annex A of the Model Food Provisions relating to misleading conduct; currently it is a matter for consumers affairs regulatory systems. The concept of 'sustainability' is not yet clearly defined and may well be beyond the scope of the Food Regulatory Agreement and of FSANZ's role with its focus on public health and safety. If 'sustainability' becomes part of the food regulatory system, this will have resource implications for FSANZ and for jurisdictions involved in enforcement of the food regulation system. New ministerial policy guidelines may be needed to guide work on sustainability.

The inclusion of sustainability and indigenous food culture as additional factors which FSANZ must consider when assessing a variation of a food standard may result in competing priorities. FSANZ and the Ministers' may require a protocol for balancing competing priorities.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

There are reservations about including sustainability as one of FSANZ's objectives.

Any change to the food regulatory system to capture food sustainability will require strong engagement with related regulatory systems and require significant increases in resourcing at a federal to local level. Many of the matters which be covered (e.g. environmental, economic) may be beyond the capability of FSANZ and state/territory food safety regulatory agencies. Therefore, it is imperative that this matter be considered initially as part of the system's modernisation before details such as definitions under the FSANZ Act are considered.

If food sustainability is captured, adoption of a broad definition for sustainability should be explored, possibly encompassing environmental, health, economic and social initiatives, though this may increase the complexity of assessments.

Some environmental sustainability considerations may potentially conflict with food safety issues. For example, extra packaging (creating additional waste) may be required to extend shelf life (moisture absorbent or oxygen scavenging pads) or reduce food crime (tamper evident overwrap). However, including sustainability in the objectives may lead to more environmentally sustainable solution being developed, for example, biodegradable packaging.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Although economic benefits for Australia and New Zealand may result, the desirability of a sustainable food supply may be beyond the remit of the food regulation system generally and FSANZ's expertise and resources or fall within the remit of several regulatory systems including the ACCC.

Potentially, economic opportunities resulting from sustainable food production and processing are very wide, involving issues such as climate change and carbon emissions, the economic viability and environmental sustainability of wild capture fisheries, and the economic viability of food manufacturing businesses.

As consumers are increasingly seeking an ethical and environmentally friendly food supply it is anticipated that sustainability will become a driver for the food industry. A major Australian supermarket imposed 'ethical audits' on their suppliers to ensure that they provided their employees with appropriate pay, accommodation, and other working conditions. It is easy to envisage 'sustainability audits' being undertaken by both domestic and international customers in the

future.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

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.

Recognition of Indigenous culture 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 people, such as access to healthy, affordable food in remote communities.

It is important that indigenous foods are subject to the same regulatory scrutiny as any other food which is new to the market.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

• 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.
• Enhanced employment and educational opportunities for indigenous people, 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 safe food handling practices

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Option 2 | Component 2, to facilitate risk-based approaches to developing/amending regulatory measures is broadly supported, although with some reservations and noting that there may be differing interpretations and expectations of what a risk-based approach comprises.
Greater use of codes of practice and guidelines by FSANZ is supported in-principle. 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. As stated in the draft RIS, ancillary legislation within each jurisdiction may be required to give codes of practice enforceable effect.

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 FMM to be directed to higher priority proposals and issues.

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.

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.

As put forward in the Draft RIS, implementation of a risk-based, decision-making tool to determine whether a standard, code of practice or guideline is required and the triaging system to be used to progress applications and proposals, is required to underpin Option 2 | Component 2.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No.

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.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

As put forward in the Draft RIS, a risk-based, decision-making tool to determine whether a standard, code of practice or guideline is 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 (e.g. microbiological limit), of a food standard. Examples of where these instruments could be useful are:

• Standard 4.2.6 (Production and Processing Standard for Seed Sprouts) provides general guidance about receiving and decontaminating seed. A Code of Practice would be useful to fill in the gaps, e.g. what is an effective decontamination process, and what log reduction in microbial numbers is acceptable and achievable?
• Should a PPP standard for horticulture be developed, several specific codes of practice/guideline may be required because of the different microbial hazards associated with different produce categories, based on a particular risk (e.g. pH or presence of inedible peel)
• Queensland Health has developed 'Label Buster' an online tool to assist small business understand the complex labelling requirements of the Food Standards Code, and where to find information about other labelling elements not included in the Food Standards Code, e.g. country of origin labelling.

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.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

No

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The use of regulatory sandboxes is supported in-principle to explore more flexible regulatory arrangements, on a case-by-case basis, to test new ideas and potentially support innovation and improve market outcomes, whilst protecting public health. However, such an environment should be created and implemented by the food regulatory system, with the support of FSANZ. There should be a compelling public health, social or economic rationale for granting exceptions to existing regulations via the use of a sandbox, and the progression of industry interests should not be done at the expense of public health protection.

Regulatory sandboxes provide an opportunity to trial and evaluate some new regulatory solutions before being introduced more broadly or rejected. However, they also could present significant risks if proposals are not carefully screened and developed in consultation with stakeholders. Careful consideration of the process and safeguards would need to be incorporated into any regulatory sandbox requirements. Consideration would also need to be given to how they would work in conjunction with State and Territory Food Acts and other legislation.

Whilst such sandboxes have been the subject of discussion in the contact of regulatory theory, it would be helpful to consider more closely some examples where they have genuinely worked with food or therapeutics (e.g. from Health Canada).

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Examples could include:
• Use of internet of things devices for monitoring parameters such as food storage temperatures for management of food safety hazards and demonstrating compliance.
• Blockchain technology for reducing food fraud.
• Use of smart packaging containing sensors that show the shelf life of a product based on its age and storage temperature.
• Use of QR Codes for non-safety related labelling requirements
• Use of QR Codes on small packages and unpackaged foods on display (e.g. food in a delicatessen display), which are currently exempt from certain labelling requirements
• Inclusion of complete food labelling requirements on foods sold on the internet, such as online supermarket stores.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

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. We are unclear about how 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'.

Resourcing FSANZ to undertake timely, holistic and regular review of food standards is supported with the caveat that a framework is developed to determine criteria for triggering a review. The necessity for review could be informed by:
• existing FSANZ Proposals that have failed to progress in a timely manner, e.g. P1010 - Review of Formulated Supplementary Sports Foods, P1024 – Revision of the Regulation of Nutritive Substances & Novel Food.
• industry enquiries indicating a non-level playing field because of difficulties in interpreting a standard.
• discrepancy in interpretation of a standard between jurisdictions, e.g. egg stamping
• large numbers of enquiries, from industry, government, and consumers, about the same issue
• food-borne illness outbreaks/cases associated with a particular product or process e.g., horticulture.

The food regulatory system currently undertakes 'research', usually in the form of surveys, in Australia and New Zealand. This work is undertaken by jurisdictions according to their own compliance plans, or nationally where it is coordinated by a working group. Universities and other research agencies also undertake food research.

The food regulatory system in Australia and New Zealand is in a strong position to undertake certain projects to improve public health outcomes. For example, Queensland was effective in reducing Salmonella outbreaks associated with raw eggs by developing and implementing a Salmonella Risk Reduction Strategy that employed interventions through-chain from farm to food service, including requiring local government environmental health officers to include questions about raw egg handling when inspecting food businesses such as cafes and restaurants.

However, other work may have less successful outcomes. Three reasons have been identified:
• National and jurisdictional surveys may lack the rigour required of scientific research, because other priorities (e.g., COVID-19, natural disaster, food-borne illness outbreak), may affect the ability of a jurisdiction to undertake such work. Often these surveys are a 'snapshot' in time, with small sample numbers e.g. folate in wheat flour for bread making.
• The problem of non-compliance is an issue associated with research/surveys at the jurisdictional level. Non-compliance cannot be overlooked by a regulator, even when the purpose of the survey is to fill a knowledge gap. A case-in-point was a survey undertaken by Queensland Health to determine the incidence of cracked and dirty eggs at point-of-sale in response to high numbers of Salmonella Typhimurium cases associated with eggs.
• The Home Jurisdiction Rule causes substantial reluctance regarding inter-jurisdictional surveys and surveillance of foods where production occurs in a jurisdiction other than that carrying out the respective study. This results in substantial stifling of such work, including development and application of new technologies. This problem is not currently effectively addressed via ISFR SEAWG and the associated National Coordinated Survey Plan.

Within the food regulatory system, given adequate additional staff resources, FSANZ could take a central liaison and information repository role to inform jurisdictions of work occurring or anticipated in other jurisdictions and minimise unnecessary duplication. Two provisos may need to be implemented; (1) No "fixed" expectations such indicated work will definitively occur (not "held to" schedule"), and (2) an expectation of "no objection" to surveillance and/or monitoring of foods sourced from other jurisdictions.

If FSANZ was to expand its role to coordinate all food safety research in Australia and New Zealand (i.e. including universities and other research agencies), it is assumed they may need additional and dedicated resources to allow critical consideration of the principal, pragmatic priorities, and timelines of research institutions, i.e. funding and publications. Additionally, academic postgraduate research timelines and variability in definitions of research contract deliverables between academic and non-academic institutions must be considered. FSANZ's leveraging of funding from external bodies, e.g. Australian Research Council, NGOs, industry via strategic in-kind, in-principal and/or direct cash support (as well as coordination with jurisdictions) must be carefully and knowledgeably coordinated.

There is substantial potential for FSANZ to benefit from research institutions' capacities in terms of data and information by identifying and supporting strategic research priorities and providing 'light touch' coordination and administrative activities, e.g. organizing conferences, regular group meetings.

Research institutions are generally protective of research data until published. Willingness to accede or share data is largely based on perceptions of efficacy of the recipient repository in terms of ease of accession and access, completeness, data quality, consistency, confidentiality, and overall management. Such functions will require dedicated, long-term funded staffing rather than short-term, ad hoc management and infrastructure.

In terms of its own data, FSANZ should be the guardian of key composition and nutrition data bases which underpin food standards including labelling (NIP, health claims). 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, OzFood Net 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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Yes

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 most also be retained

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Option 2 | Component 5 is supported provided any such proposals are considered as part of the modernisation of the system. One of the proposed aspirations for the system is to continuously improve the system(draft Aspiration 6) by establishing mechanisms to enable horizon scanning, risk analysis and emerging issues to better anticipate trends and influence future activities (such as reviews of food standards, policy development, setting strategic directions and priorities). Intelligence sharing is a matter for all regulatory partners.

Jurisdictions have the key responsibility to comprehensively brief their Minister on current issues for the food regulatory system, including specific jurisdictional issues, to permit robust discussion at the FMM. Joint agenda-setting and agreement of priorities by FSANZ and FMM, informed by FSANZ's intelligence on emerging public health and safety issues, will help ensure relevance of FSANZ's work, and via the trickle-down effect, the entire food regulatory system.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Government open data policies need to be considered. The Australian Government Public Data Policy Statement provides a mandate for Australian Government entities to optimise the use and reuse of public data, release non-sensitive data as open by default and collaborate with the private and research sectors to extend the value of public data for the benefit of the Australian public. Similarly, the Queensland Government Open Data Portal advises the Queensland Government is committed to building a trusted data ecosystem that makes important and non-sensitive data open for anyone to access, use and share.

Willingness to pay for FSANZ-provided data or data-linkage will be dependent on a client's perception of the efficacy and quality of the data repository/data-linkage services in terms of ease of accession and access, completeness, data quality (cleanliness, consistency, timeliness), confidentiality, and overall management. Such functions will require dedicated, long-term funded staffing rather than short-term, ad hoc management and infrastructure. In the absence of same, it is unlikely clients would pay for data or data-linkage services, but will rather rely on informal ad hoc, and/or internally generated data sharing.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Option 2 | Component 6 has little effect on jurisdictions.

Creating a small, appropriately skilled Board, for example eight members including the Chair, with a streamlined appointment process is supported in principle. There is a limit to which appointments to, and operations of, boards such as the FSANZ board could be streamlined, while still maintaining the necessary combined skill set of the members, and ensuring all probity and suitability considerations have been met regarding the appointment of board members. However, it should be noted that the Board of Directors of Safe Food Production Queensland (Safe Food) consists of five members, including the Chair, and works effectively. The Queensland Department of Agriculture and Fisheries,, as well as the Chair and CEO of Safe Food are willing to discuss governance arrangements further with the review steering committee.

The Food Ministers' Meeting (FMM) should be provided adequate time 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.

Boards should be able to operate on a combination of face to face and virtual communication.

The issue of business solutions seems to be an internal matter for FSANZ, rather than requiring legislative amendments. The reason for the inclusion of this issue in the draft RIS is questioned.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Option 2, as a whole, requires significant change for FSANZ, and therefore brings significant risk to FSANZ, and consequently, the food regulatory system.

• One of the main failings of FSANZ has been its inability to progress many proposals to change the Code (i.e. reviews) due to inadequate resources, This has resulted in problematic requirements continuing and a Code which has not kept pace with industry developments and stakeholder expectations. Some

components presented in Option 2 have the potential to free resources and allow FSANZ to focus on its key function of developing and maintaining contemporary food standards, while other components add additional functions that may draw resources away from this key function as a food standards agency.

• It is considered FSANZ may require additional capability if Option 2 is to succeed. Areas where additional capability may be required are:
o 'have regard to' sustainability, indigenous food and expertise, and food crime when assessing applications and proposals.
o make use of regulatory sandboxes.
o proactively drive the food regulatory system via knowledge of emerging risks and changes in global consumer expectations,
o coordinate food research in Australia and New Zealand, including research undertaken by universities and other research agencies
o maintain food databases, including charging for access.

• Frameworks for risk-based decision making for progressing applications and proposals, and for the incorporation of industry-based codes of practice and guidelines into a suite of regulatory instruments are required. If they are not fit-for-purpose, i.e. ineffective and create public health risk, Option 2 will not succeed. The industry self-substantiation and minimal check pathways are also new ways of progressing low-risk applications and proposals, and also come with a risk, albeit low in this case.

If FSANZ is an effective driver of forward-looking regulation and innovation, this will enhance the reputation of Australian and New Zealand food industries as being safe, high quality and innovative, impacting positively on trade. However, if FSANZ is slow to recognise and permit innovation, especially initiatives relating to sustainability and associated promotion in labelling, or an emerging food safety risk (e.g., new viral pathogen), there is a major risk of reputational damage, trade disruption and competitive disadvantage for Australian and New Zealand food industries.

The key risks for jurisdictional stakeholders are:

• specific jurisdictional issues may be subsumed by bi-national issues. This risk may be intensified if FSANZ becomes the single source of information of food safety and standards for consumers and industry.

• Option 2 will require a capability and capacity uplift for jurisdictions
o Jurisdictions may be required to take on additional monitoring and enforcement activities under the industry self-substantiation pathway to bring new products to market.
o The regulatory sandbox option especially may require both a capability and capacity uplift for jurisdictions, depending upon their responsibilities. Currently FSANZ does not have an enforcement role, and so will have to rely on jurisdictions if enforcement or education is required.
o Jurisdictions will require additional capacity and capability to develop new ministerial policy guidelines on sustainability, indigenous food and expertise, and food crime, and capability to undertake holistic reviews of food standards.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No, except potentially external bodies paying for data

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

It would be reasonable for FSANZ to recover costs incurred in application processes and the implementation and compliance monitoring of regulatory sandboxes if these are included in FSANZ's role.

Provision of interpretative advice should not attract fees. It should be regarded as a core function of FSANZ for which stakeholders should not have to pay or pay only a minimal administration fee. We agree that jurisdictions and FSANZ have had difficulty in providing consistent advice. However, inconsistent advice results from inconsistencies or ambiguities in the Food Standards Code. Consequently, a mechanism is required to identify and consider problematic issue in the Food Standards Code so that it is amended in a timely manner. Such a mechanism could involve a committee approach where interpretation is carried out by a diverse range of stakeholders, including jurisdictions.

The Act should provide the ability for FSANZ to recovery costs associated with a particular business or person (i.e. benefit provided for 'the one' rather than 'the many'). However, it should be noted that FSANZ's previous cost recovery model for the now defunct interpretive service was not successful and resulted in businesses approaching jurisdictions to avoid costs.

Although fee-for-service may be appropriate for some services, firm proposals regarding fees would need to be fleshed out and subject to a separate public consultation exercise

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

We agree that the impact would be greater for small and medium enterprises (SMEs), than for larger businesses - it will result in a greater competitive advantage for larger businesses which can afford the fees and use internal resources to seek advice. It may also result in SME businesses approaching jurisdictions for assistance.

The nature of the fees and principles about public vs private commercial benefits would need to be carefully considered.

Cost-recovery 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

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Food regulatory agencies generally do not make applications to FSANZ to change food standards, although there are exceptions. They will work with the FRSC and through the FMM to request FSANZ raise proposals to change food standards. However, the Department of Agriculture and Fisheries has done so in specific contexts, for example in the recent application (A1193) regarding the irradiation of fresh produce for phytosanitary purposes.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Not applicable

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Not applicable

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

At the outset, officers from Queensland Health would like to correct some statements in the Modernising the FSANZ Act paper in section 3.4.1 (page 41) and Option 3 component 1 (page 106) regarding the strawberry tampering incident. While Queensland Health did not trigger the National Incident Response Protocol, it is not true to suggest there was no process for national coordination and that there was not national coordination and communication. The strawberry incident was unusual in that involved a large police investigation with sensitivities regarding confidentiality of information not normally present in food incidents.

It is recognised that there is need for greater leadership and coordination of multi-jurisdictional outbreaks to ensure consistency of investigations and informed decision making. However, the option outlined in the paper 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. There are several elements to this option that are unclear, for example does the proposal:

• apply in addition to current arrangements for incidents and recalls
• require State and Territory governments, and for imported foods the Department of Agriculture, Water and the Environment, to cease investigating and coordinating food incidents
• apply to both voluntary and mandatory food recalls
• require changes to State and Territory government legislation
• apply to food incidents where the police are leading the investigation.

Providing FSANZ with an ability under the FSANZ Act to declare a national food incident for the purpose of coordinating a national or multi-jurisdictional food incident may have some merit but several issues would need to be resolved. FSANZ cannot direct jurisdictional bodies to undertake certain actions. Since national and multi-jurisdictional incidents require agencies to voluntarily work together, consideration may need to be given to how the process for declaring a national food incident would work when it is not supported by a jurisdiction (perhaps due to police confidentiality concerns).

Most recalls are voluntary and instigated at the request of the business undertaking the recall. As such, FSANZ may not need the power to instigate the recall. The power to mandate food recalls currently resides in state and territory food acts. It would not be a straightforward process to provide this power to FSANZ, because it is linked to range of other requirements under state and territory food acts related to enforcement, powers, offences, evidential requirements,

confidentiality etc. That is, for FSANZ to be able to mandate food recalls, they would need to become an enforcement agency with a suite of suitable legislated enforcement requirements and be provided the resources and capacity to enforce the requirements.

Any recommendations to remove the power of food enforcement jurisdictions to mandate recalls, or transfer these powers to FSANZ, would be undesirable and unlikely to be supported. Some recalls, particularly mandatory recalls, are an outcome of investigations into issues such as food borne illness, allergic reactions, and foreign matter in food. Transferring these powers from state and territory governments to FSANZ may hamper the ability to instigate such recalls.

The review of the FSANZ Act should consider whether confidentiality requirements should be improved in relation to publishing information on food recalls and incidents, including media releases. This needs to include the power to publish information in the public interest, or at least clarifying who would release such information in the public interest (e.g. Chief Medical Officer or Secretary of the Department of Health). Without a power to publish information on food recalls or incidents in the public interest where there is a serious risk to public health and safety, FSANZ may be legally liable if it publishes such information, or legally be unable to effectively such publish information despite it being in the national public interest. While the power to publish such information in the public interest may be able to be done by a state or territory government, they will only be able to publish information relating to their jurisdiction.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The cost of food-borne illness to Australian society is estimated to be $1.249 billion, with approximately 4.1 million cases per year. However, these figures are dated from a 2006 study by Kirk et al. (2014).

A 2018 outbreak of Listeria monocytogenes associated with rockmelons resulted in the temporary closure of an export market, and domestic market impact with losses to growers estimated at AUD $15 M. Broader rockmelon industry impacts included destruction of existing stock, a 2018 apparent market value (AMV) decline of -71.9% (AUD $23.7 M), and residual 2019 AMV decline of -39.8% (AUD $13.1 M). (FSANZ (2020) Assessment of economic impact of food safety incidences in fresh fruit and vegetables).

A 2018 food tampering incident associated with needles in strawberries led to a national recall with growers having to destroy fruit rather than harvest, as market distribution pathways closed. The resultant 2017-2018 wholesale price and volume each declined by -17.1%, and overall market value declined by 28.1%. The 2019 post-incident impact is reflected in a -12.1% lower wholesale price and industry AMV reduction of $24.7M (-8.6%) compared to pre-incident (2017). (FSANZ (2020) Assessment of economic impact of food safety incidences in fresh fruit and vegetables).

A 2013 economic impact study of food safety outbreaks on food businesses in the US estimated the cost of food safety incidents for the US economy at ca. USD $7 billion per year. Associated costs included consumer notifications, stock removal and destruction, and damages as a result of lawsuits.

Examples of quantified costs that food businesses have borne because of prosecutions can be provided by the Food Safety Standards and Regulation Unit of Queensland Health on request. However, these costs just relate mostly to investigation and legal costs.

Safe Food Production Queensland does not have quantified costs; however their understanding is that for recalls associated with eggs, the costs for medium-sized enterprises can be over $100,000. Such costs are associated with more than conducting the recall. The following list of additional costs relates to egg recalls, but is typical for other food product recalls:

• retailers returning product outside the scope of the recall
• the business being unable to put the same brand of product back into the market until the recall has been completed due to fear of acceptable product being caught up in the recall
• businesses not supplying product while regulatory investigations are completed and system failures that led to the recall have been remedied
• the cost of labour or diverting product to secondary processing at reduce cost while system failure issues are being remedied
• the loss of customer and consumer confidence in branded product
• breach of contract with major retailers due to failure to meet supply arrangements and financial penalties for recalls
• maintenance cost (if repairs or modifications required to equipment that caused the failure)
• regulator costs (e.g. onsite audit)
• loss of overseas market access
• overtime after a recall to complete to rebuild stock levels, and
• disposal of recalled product.

It is understood FSANZ collect some information on food recall costs from businesses in their post-recall reports, which may be available on request from FSANZ.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

This option would require the support of the New Zealand to succeed, particularly the New Zealand Ministry for Primary Industries. Extending FSANZ's role to coordinate food recalls on behalf of New Zealand would provide a bi-nationally consistent approach to the coordination of recalls, especially for products available on both the Australian and New Zealand markets. However, there are a few issues that would need to be resolved:

• New Zealand and Australia classify recalls differently. For example, New Zealand food recalls may include recalls for non-compliance with legislated requirements, whereas recalls in Australia are limited to removal of unsafe food from distribution, sale and consumption. Some New Zealand recalls would be considered 'withdrawals' in Australia, which are not covered by legislated recall requirements.
• If the Australian recall procedure was extended to include New Zealand enforcement agencies, it would lead to an increase in recall notifications when this is not necessary. However, FSANZ could more selectively target their recall communication.
• Australia food recall requirements are tied to Australian Consumer Law requirements, plus state and territory Food Acts. Consideration would need to be given

to whether this impacts on the proposal.
• If additional resources were not provided to FSANZ for this function, it may draw valuable FSANZ resources from other functions.
• Potential conflicts of interest between Australian and New Zealand interests would need to be managed.

Public communication on recalls would need to be carefully considered, for example, should New Zealand consumers be advised of Australian only recalls

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Support in given in principle FSANZ providing greater guidance on food standards. It seems reasonable for FSANZ to have a role in clarifying the provisions of food standards when they have developed the standards and have an understanding of the drafting intent and technical requirements that may not be available to other agencies. This proposal would need to sit within the broader jurisdictional consistency work which is proceeding as part of the Priority 3 reforms.

Guidance on food standards might 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 specific issue to businesses considering their specific 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 is not a policy role. 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 Code. Instead, the Code needs to be able to be amended in a timely manner to consider areas where inconsistencies arise. While some types of advice can help interpret poor drafting of food standards, this should be considered a short term strategy, and mechanisms implemented to correct unclear food standards.

FSANZ is best placed to develop guidelines relating to interpretation of food standards, particularly when developing new standards. FSANZ currently has a number of user guides on their website for food labelling which are now quite old. However, they are still very useful. FSANZ has not updated them based on an argument that this is outside their role and that they cannot interpret requirements despite developing them. General guidelines assist both industry and enforcement agencies and will usually not relate to interpretation specific to the individual circumstances of a business. As many jurisdictions automatically adopt food standards via their food legislation, the inclusion of statements alongside food standards is supported as a measure to promote consistency in the adoption, implementation and enforcement of standards.

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.

Currently the self-substantiation process for general level health claims is cumbersome and problematic and allows non-compliant health claims to be in the marketplace. It would be more progressive to have regard to the barriers to business for attaining pre-approval for items by amendment of the Code. Consideration should be given to removing the ability for self-substantiation in exchange for greater flexibility for processes to have the Code amended.

Enabling FSANZ to assist businesses to prepare an evidence dossier to substantiate health claims should be considered as part of the broader Priority 3 work program, however while it may assist businesses it is unclear how this will reduce inconsistent monitoring and enforcement.

It may be useful for the Minister to have power to determine if a product is a food or medicine in some circumstances, for example, substances that do not have a nutritional role and are used for a physiological effect. However, it is noted the Minister for the therapeutic goods can currently make such determinations regarding the food medicine interface. Furthermore, some products may be developed to comply with either food or therapeutic goods requirements, which is a business decision. There is an ongoing need to provide a streamlined mechanism to determine if a product is a food or therapeutic good. However, whether the FSANZ Act is the appropriate mechanism will need to be considered as part of the modernisation of the system.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

This matter is currently being considered as part of the Priority 3 program of work and highlights the importance of the FSANZ Act being reviewed and considered as part of the modernisation of the system.

MP Consulting prepared a report on the costs of inconsistency for the jurisdictional consistency project, a component of the Priority 3 work program for the food regulatory system. The MP Consulting report includes costs in relation to the waiting time for FSANZ proposal to be progressed. The Key Areas of Inconsistency in the Food Regulation Report includes many references to costs relating to the development and implementation of standards. It is assumed, industry or

individual businesses may be able to provide data on the costs of jurisdictional inconsistencies.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

FSANZ's role should not extend to enforcement at this stage. However, it is noted that FSANZ could have a greater role in assisting compliance and enforcement.

Since FSANZ develops food standards for both Australia and New Zealand, regulatory capture becomes a real risk for FSANZ if it is involved in both food standard setting, compliance and enforcement, particularly if it is an enforcement agency in one country and not the other. That is, it has the potential to undermine the bi-national arrangement.

As indicated in the draft RIS, FSANZ's independence is an asset. Therefore, if FSANZ undertake any enforcement activities this independence would be diluted and its reputation as a trusted government body would be undermined. While FSANZ having an enforcement role may assist in providing greater consistency across jurisdictions, this would be more than offset by other issues such as enforcement in regional areas, efficiency gains where food standards enforcement are integrated into other functions (particularly at a local government level), and the potential for confusion of stakeholders and businesses who may need to engage with regulators at a local, state/territory and federal level

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

Support is not provided for FSANZ taking on an enforcement role, although there might be some very specific areas for a limited enforcement role which could be considered, such as providing a head of power for FSANZ to approve certain things that are enforced by other agencies.

As indicated in the draft RIS, FSANZ's independence is an asset. Therefore, if FSANZ undertake any enforcement activities this independence would be diluted and its reputation as a trusted government body would be undermined. Furthermore, regulatory capture becomes a real risk for FSANZ if it is involved in both food standard setting, compliance and enforcement.

Creating a single bi-national regulator, or national (Australia, only; New Zealand, only), regulator would be a complex task and could involve changes to constitutional powers and responsibilities that would need to be negotiated, such as ceding any state and territory powers to the Commonwealth. It is likely there would be limited ability for FSANZ to hit the ground running or to regulate matters requiring face-to-face industry contact due to resourcing capability. As FSANZ is currently not a regulator, this option would require a significant capacity and capability uplift for FSANZ, in addition to significant legislative amendment to include provisions about FSANZ's enforcement scope, activities and powers.

The discussion paper does not explain how such a regulator would work. Consideration would need to be given to how the new bi-national or national regulator would effectively and logistically provide services to all areas of Australia, particularly regional areas. Many food standards compliance and enforcement activities are currently integrated with other work and supported by administration frameworks that support a range of other functions, particularly in local governments and Queensland public health units, which allows food standards work to be economically delivered at a local level. Furthermore, enforcement activities are supported at a state and territory level by a legal and administrative framework. It is unclear if the proposal would involve the new national body undertaking all enforcement activities itself, or if these would be devolved to existing food regulators. If the functions were to be devolved, another layer of complexity in the system would be created. We note there are alternatives for achieving greater national consistency that could be developed, such as improving accountability, standardising practices, improved reporting and data sharing, funding certain enforcement priorities, et cetera.

Labelling – further exploration is needed in the option on whether FSANZ is totally responsible for enforcement of labelling requirements in the Code, or whether they have enhanced functions to improve the bi-national system for labelling compliance. There are potential problems making FSANZ totally responsible for enforcement of labelling. From an enforcement perspective, labelling is intimately linked to compositional requirements and splitting the enforcement of these between different agencies may be unworkable. Labelling is also currently linked to existing foodborne illness investigation and food incident response arrangements, for example, food allergy investigation and recall requirements. As discussed above, surveillance and enforcement are linked often to the delivery of other regulatory functions, so enforcement of labelling by a single agency may require additional resources overall.

There are many ways FSANZ could enhance the current regulatory framework for food labelling, such as providing advice and online tools currently provided by state and territory governments. This would reduce duplication and create efficiencies. Labelling standards are complex, as illustrated by the fact that Queensland has developed a dedicated web-based labelling tool to assist small business called Label Buster based on a previous printed publication. The resource could potentially be transferred to FSANZ to manage. The online tool, which is in its first iteration, still has some limitations. For example, the label elements, nutrition information panel and Health Star rating, should directly extract data from FSANZ's nutritional databases and HSR calculator. The Plain English Allergen Labelling amendment to allergen labelling was gazetted during the development of Label Buster and have not yet been included in it. Therefore, there are several advantages if FSANZ, rather than an individual jurisdiction, had an on-going role of maintaining and updating this tool, based on amendments to food standards and relevant data bases.

There may be economies of scale if FSANZ had greater role in compliance, including standardising interpretation, and educative role regarding food labels, especially for national and bi-national food businesses.

Regulatory sandboxes -- More information would be required in the regulatory sandboxes option (Option 2 | Component 3) to be able to comment meaningfully on whether FSANZ could enforce them. At face value, regulatory sandboxes require agreement of a food enforcement agency to not enforce a current requirement for the purposes of the sandbox and therefore must include the relevant enforcement agencies (i.e. state and territory governments). However, this does not mean FSANZ would be excluded. That is, regulatory sandboxes, would likely need to require partnerships involving FSANZ, as the food standards setter, plus

enforcement agencies, and industry.

Despite the above reservations, some of the items discussed in subcomponent 2 would benefit from bi-national/national oversight. These include:

• Applying risk frameworks for assessment of certain businesses or activities. In Queensland, different local governments have different methods for assigning risk to a food business. Licensing and inspection schedules are based on the assigned risk-rating of the business, and compliance data captured accordingly. If the same risk-profiling system was used state-wide or nationally, it would be easier to extract information relating to a particular type of business and better understand issues that pertain to a specific type of local government, e.g. with small, medium, and large numbers of businesses within their jurisdiction (e.g. education rather than enforcement for remote local governments where it is difficult to close down a supermarket). Identical reporting parameters mean that causal relationships can be established e.g. has lower inspection rates of cafes and restaurants, or the issuing fewer PINS, resulted in an increase in food-borne illness outbreaks?
• In Queensland, different local governments use different data capture platforms to record their activities. As discussed in dot point 1, above, this makes it difficult to obtain consistent statewide data, making trend analysis more difficult. This example can be extrapolated to the national scheme.

Training packages are really a separate item from enforcement. While developing national/bi-national training packages for EHOs would be advantageous, it does not require FSANZ to have enforcement powers. The discussion paper has not presented an argument why FSANZ would need be the lead agency. There are currently professional practice bodies and mechanisms available to require professionals to remain up to date that could be explored as an alternative.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Queensland Health and local governments have shared responsibility for the enforcement of the Food Act 2006.

• In Queensland Health, resources are shared between the Health Protection Branch and Hospital and Health Services. The Health Protection Branch currently employs 8 full time equivalent staff or FTEs. The Hospital and Health Services and currently employ 150 staff that are authorised under the Food Act, however, undertake various functions under numerous pieces of legislation relating to environmental health and health protection activities therefore quantifying the commitment to food regulation cannot be specifically determined. Staff from Health Protection Branch also contribute to the development of food standards. These resources are paid by the State Government and not by any service charges.
• Queensland local governments employ/contract staff (mostly environmental health officers) that are responsible for a number of pieces of pieces of legislation and regulatory functions. Their work on each will fluctuate as demand requires. It is estimated the proportion related to food regulation work is 188 FTE. This figure does not include support staff dedicated to administrative and executive positions, nor staff dedicated to complaints, plumbing, building and other planning approval activities related to food businesses. Some local government costs for food safety standards work are offset against revenue from food business licenses under the Food Act 2006. Please note, the number of local government FTE dedicated to food regulation work in Queensland is not directly comparable to most states and territories, because public health units in Hospital and Health Services enforce Chapters 1 and 2 of the Food Standards Code whereas in some jurisdictions these two Chapters are enforced by local governments.
• The time dedicated to food regulation fluctuates and needs to consider surge capacities, again making it difficult to quantify resources. For example, greater numbers of staff and expenses are dedicated to incidents such as COVID-19, intentional tampering of food and foodborne illness outbreaks.
• The costs for Queensland Health and local governments will be higher than the FTEs quoted above because these relate to enforcement officers only. Ancillary staff such administration, technical officers and managers are not included. Furthermore, costs are not provided for operating expenses and physical resources such as buildings and equipment.

The primary function of Safe Food Production Queensland (Safe Food) is to implement, monitor and enforce compliance with food standards, as well as contributing to their development. Safe Food operates under a cost recovery model, has an operating budget of approximately $6 million per annum and currently employs 33 FTE. A vast majority of Safe Food officers are approved auditors.

DAF administers the Food Production (Safety) Act 2000 with Safe Food. DAF is not a regulatory agency in the context of food safety, except for some specific functions such as AgVet chemicals.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

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. Currently there is minimal engagement with jurisdictions regarding such matters, limiting their input which is based on regulatory and scientific expertise and engagement with industry and knowledge of their practices and systems. There is opportunity for any international role of FSANZ to be enhanced by drawing on expertise in jurisdictions.

Intelligence from international forums should be passed on to jurisdictional stakeholders in an effective and timely manner. For example, over the last five years, FSANZ has not provided a debrief to FRSC following participation in Codex or the APEC Food Safety Cooperation Forum meetings.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Any proposal that requires state or territory governments to cede power to the Commonwealth need to be include the costs for state and territory governments to make the required changes. If functions are to be centralised to the Commonwealth, consideration needs to be given to if there will be any loss of services to regional and remote areas, and if there are increased costs to deliver services to regional and remote areas, for example, increased travel costs.

Caution needs to be applied to estimating revenue from prosecutions. It is the experience of officers of Queensland Health that the cost of prosecuting a business far exceeds any fines which normally go to consolidated revenue and not the enforcement agency.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Cost recovery mechanisms could possibly apply to training.

Charges could be applied to food standards interpretation services, though this also is a barrier for smaller businesses. Businesses can currently obtain general free advice from enforcement agencies, though this may be inconsistent. Very careful consideration should be given to the costs and benefits of charging for interpretive services, as discussed above. A previous project by FSANZ to establish an interpretive service failed. Consideration of any new interpretive service should carefully consider the reasons for previous failures including reasons for the poor uptake of the service, the cost structure, and equity of access.

Charges could reasonably be applied to assessing health claims or health claim self-substantiation dossiers if FSANZ takes on this function.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No

The draft RIS does not consider options which enable FSANZ to divest itself of responsibilities that would be better undertaken by an Australian Government department or jurisdictions, such as the coordination of existing stakeholder forums conducted by FSANZ.

Whilst Option 2 | Component 5 and Option 3 | Component 4 discuss FSANZ taking on a legislated role to build better relationships with comparable international partners, there is no discussion of how intelligence from international forums will be passed on to jurisdictional stakeholders in an effective and timely manner.

The draft RIS has not considered policy approaches to progress draft Aspiration 3 – Informed, engaged and accountable stakeholders. There is no discussion in the draft RIS on whether FSANZ should have a role in collaborating stakeholder engagement, including proactively communicating advice to stakeholders, to better enable expert advice to guide the food regulatory system. The draft RIS only partly addresses Aspiration 6. Whilst discussing review of food standards, policy development and setting of strategic directions and priorities there is no analysis of how the system as a whole will be proactively monitored and regularly reviewed to drive continuous improvement.

As this RIS is focused on a review of the FSANZ Act, it would have been helpful to discuss not only policy but also more clearly highlight where and how the FSANZ Act would need to be changed.

The review of the FSANZ Act should consider whether confidentiality requirements should be improved in relation to publishing information on food recalls and incidents, including media releases. This needs to include the power to publish information in the public interest, or at least clarifying who would release such information in the public interest (e.g. Chief Medical Officer or Secretary of the Department of Health). Without a power to publish information on food recalls or incidents in the public interest where there is a serious risk to public health and safety, FSANZ may be legally liable if it publishes such information, or legally be unable to effectively such publish information despite it being in the national public interest. While the power to publish such information in the public interest may be able to be done by a state or territory government, they will only be able to publish information relating to their jurisdiction.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Subject to the consideration of Priority 3 recommendations - Option 2 | Components 1 and 2 and Option 3 | Component 2 are considered the highest priorities

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No, the reform options do not fully align with Aspirations 3 and 6.

The draft RIS has not considered policy approaches to progress draft Aspiration 3 – Informed, engaged and accountable stakeholders. There is no discussion in the draft RIS on whether FSANZ should have a role in collaborating stakeholder engagement, including proactively communicating advice to stakeholders, to better enable expert advice to guide the food regulatory system.

The draft RIS only partly addresses Aspiration 6. Whilst discussing review of food standards, policy development and setting of strategic directions and priorities there is no analysis of how the system as a whole will be proactively monitored and regularly reviewed to drive continuous improvement.

All options presented in the draft RIS must be considered within the context of Priority 3 work to modernise the food regulatory system. Aspirations need to be captured in the Food Regulation Agreement and then cascade down into the FSANZ Act.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

There is no supplementary information associated with this submission.

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:39:04**

About you

What is your name?

Name:
Glenn Robertson

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Steritech Pty Ltd

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Irradiation Service Provider.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

There is currently ambiguity around FSANZ's broader role in achieving public health, nutrition, and safety objectives beyond acute food safety issues, such as promoting healthy eating and protecting Australians and New Zealanders from diet-related diseases. Clarifying the definition of the term PH&S in the primary legislation is an important step to creating the overall strategic direction for the FSANZ Act and for FSANZ.

Steritech suggests that policy on what Food Minister's see as an appropriate definition of PH&S is needed, based on the following key principles:

• The definition is fit for purpose
• safeguards the quality and safety of the food supply
• Maintains FSANZ's primary responsibility to protect public health and safety to ensure safe and suitable food under the section 18 objectives of the FSANZ Act
• allows innovation by industry and does not create trade barriers.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Whilst food sustainability is important, protection of public health and safety to ensure safe and suitable food should be the key priority. Without a specific definition of sustainability in the RIS, no further comments can be made.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The regulation and approval of novel foods may be a specific example. However, it is unclear how recognition of indigenous culture and food expertise specifically relates to food, progression of standards by FSANZ and ensuring the safety and suitability of food under the section 18 objectives of the FSANZ Act.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Steritech does not support this option as it does not optimally support a strong, resilient and agile regulatory system and allows only a limited degree of risk-proportionality when progressing standards work, compared to option 2.

Steritech agrees with other stakeholders identified in the RIS, that this option would represent a missed opportunity to ensure that the Act remains fit-for-purpose and is adequately future-focused.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Steritech sees the key risks for our industry as the following:
• costs associated and delays with the application process is a real barrier to many small and medium businesses such as Steritech seeking variations to food standards.
• limited recognition/harmonization of international approval processes.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Steritech is not able to provide any data at this time.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Steritech is not able to provide any comment on this question.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

These consist of the following:
• The considerable waiting time once an Application has been submitted to FSANZ and commencement of the work on the Workplan.
• Considering that Codex has had in place a general standard for food irradiation that covers both sanitary and phytosanitary needs, the current case-by-case application process for food irradiation applications is inefficient to achieve approvals in a timely manner.
• associated cost burden of submitting data for assessment by FSANZ.

• The 60-day delay by the Food Minister's considerations when the FSANZ Board has signed off on a standard.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

This question does not apply to Steritech.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Steritech supports clarifying the objectives and functions of FSANZ and reflect these in the Act.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

A definition of sustainability is not under FSANZ's principal remit of protection of PH&S. Furthermore, without a definition of sustainability in the RIS, no further comments can be made.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS once other industry sectors who are in a better position to provide input into this question have made submissions to this Consultation RIS.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Progression of standards by FSANZ to ensure the safety and suitability of food under the section 18 objectives of the FSANZ Act should continue to be the principal mandate of the FSANZ Act. Therefore, Steritech questions what the actual intent of recognising indigenous culture and food expertise is for the regulation of food.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Steritech notes that FSANZ already undertakes a risk-based approach, but supports further considerations as follows:
• Provide for the Forum to delegate decision-making to FSANZ for more low risk, technical amendments.
• Use international standards and risk assessments.
• Enable FSANZ to adopt international standards, where supported by a credible risk assessment including dietary patterns and industry practices relevant to the Trans-Tasman system.
• New pre-market pathways (via automatic or minimal check options) to expedite low-risk amendments to food standards or a post-market focus for foods that present exceptionally low risk to consumers.
• Where appropriate, self-substantiation pathways

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Steritech supports concept/policy of Food Ministers' delegating to the FSANZ Board for decision-making for specific standards (e.g., food irradiation Applications which have minimal, or no risk assessments needed). Currently the Australian Pesticides and Veterinary Medicines Authority (APVMA) can change the Maximum Residue Limits standard of the Food Standards Code directly, without oversight of the Food Ministers' Meeting.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Steritech supports minimal effective regulation, codes of practices that are flexible and if a review is needed of a COP, this could be undertaken in a timelier manner.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Steritech is not able to provide any data at this time.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

Steritech supports this potential savings but has no data in support of this concept.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Steritech supports this as a concept but it may not apply to our business and there would need to be more information and education about how this would operate and an Australia wide acceptance of the framework and outcomes by state/territory jurisdictions.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Steritech notes that this is already a function that FSANZ performs but supports an expansive repository of food safety or food composition information through several key activities. For example:
• more timely, holistic, and regular reviews of food standards.
• Equipping FSANZ to coordinate food safety research across Australia and develop strategic relationships with New Zealand food safety research entities
• FSANZ as the guardian of key food safety databases
• FSANZ to collate and create consumer-facing food safety education materials

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

• Steritech notes that this is already a function that FSANZ performs but sees additional value in the following: FSANZ and the Food Ministers' Meeting undertaking periodic joint agenda-setting to agree on the proposals on which to focus. This would free up valuable FSANZ resources to not focus on generating standards that may not be necessary to ensure PH&S.
• FSANZ could partner with government to make intelligence-led decisions and reduce duplication of efforts.
• FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Steritech suggests that this could be achieved by the following:
• Succession planning for replacement of Board members
• Increased use of virtual FSANZ Board meetings, rather than face-to-face meetings
• Investment into business solutions to help staff work more efficiently.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

No. FSANZ's primary responsibility is to protect public health and safety to ensure safe and suitable food under the section 18 objectives of the FSANZ Act.

Therefore, standards should be able to be progressed without further cost implications for industry via a reduced timeframe for consideration of Applications and recognition of overseas approvals.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

In the first instance, this would impact on whether a business chose to proceed through the FSANZ approval process. In addition, this would reduce the opportunities for industry innovation for new food products, limit consumer choice and availability to new foods and increase the price of food, as additional costs may need to be passed onto consumers.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Between 1997 to 2021 Steritech has either led or been a principal stakeholder in applications seeking permission for irradiated foods.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

when trying to engage with the food regulation system?
These are as follows:
• Difficulty or no idea how to engage and seek approvals.
• The current FSANZ Application Handbook is not user friendly.
• Navigating the Code is not straight forward.
• Timely consideration of applications
• extensive risk assessment data needed to support applications.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Yes, via the following new pathway:
• If FSANZ undertakes regular, more holistic reviews of food standards so that food standards remain contemporary, fit for purpose, and encourage industry innovation. For example, a review of the mandatory labelling of irradiated foods.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Steritech is not able to provide any comment on this question but does support less ambiguity in how to interpret standards. Steritech will note outcomes in the Decision RIS.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Steritech is not able to provide any comment on this question but will note outcomes in the Decision RIS.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

FSANZ should maintain its principal function of protection of PH&S and providing advice/guidelines on the intent of food standards.

For example, a broader enforcement role would involve functions such as auditing of businesses for food safety plans which is currently beyond FSANZ's remit and capability.

The makeup of the food regulatory system with Federal, state/territory and local councils makes enforcement issues too complicated to drive from a single Commonwealth source.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

Steritech's position is that FSANZ should focus on delivering its core business effectively before broadening its remit and the risk of diluting the organisation's impact. FSANZ's credibility and trusted status as a risk-and science-based standards setting body could be compromised if it took on additional functions, such as regulatory roles.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Steritech supports clarifying legislation so FSANZ can extend Australia and New Zealand's influence on the international stage, to build better strategic relationships with comparable international regulators to either share assessments or standards or make these together for mutual benefit as part of the harmonisation process. Ultimately greater harmonisation with international standards will create new or strengthened trade channels which will benefit Australia and New Zealand businesses.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Steritech is not able to provide any comment on this question.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

None

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Yes and Steritech supports the following:
• Minimum effective regulation
• Level playing field for the domestic food industry compared to international industry
• More user-friendly processes for making applications to FSANZ for SMEs
• No further extension of the cost-recovered arrangements so as to aid industry innovation and keep costs to a minimum.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Steritech supports option 2 with components 1&2 as key priorities. This would provide:
• A modern, fit-for-purpose regulatory framework
• A strong, resilient and agile food regulation system

• More flexible and risk-proportionate approaches
• Expanding the objectives to explicitly reference trade as a core objective of FSANZ (although subordinate to public health objectives) would better reflect the importance of a competitive domestic and export food industry for both Australia and New Zealand.
• a significantly new approach to developing or varying food standards or introducing foods to the market via other mechanisms, noting that changes would require some operational adaptations for both FSANZ and industry.

Specifically, supports Legislative changes that could:
• Support more risk-based processes and decision-making.
• Resourcing FSANZ to undertake regular, more holistic reviews of food standards so that food standards remain contemporary, fit for purpose, and encourage industry innovation. For example, a review of the mandatory labeling of irradiated foods.
• Provide for the Forum to delegate decision-making to FSANZ for more low risk, technical amendments.
• Make best use of international standards and risk assessments and enable FSANZ to adopt international standards, where supported by a credible risk assessment including dietary patterns and industry practices relevant to Trans-Tasman system
o FSANZ could ‘cherry pick’ whether an international standard was more suitable than a current standard in the Code. That could be a trigger point for a FSANZ review that resulted in a clear systematic, evidence-based and strategic approach to an updated standard in the Code.
• The Act could be amended to enable FSANZ to formally recognize and adopt the assessment and determinations of ‘overseas bodies’ (with appropriate statutory controls). This could be limited to specific international bodies (such as Codex) or specific assessments (such as chemical risks assessments undertaken by the Joint Food an Agricultural Organization of the United Nations / World Health Organization Expert Committee on Food Additives) or could be a more general power.
o This could help to promote industry innovation and reduce data requirements for applicants.
• Streamlining current pathways to amend food standards, including through expanded use of the process for minor variations, delegation of the FSANZ Board or the Food Ministers’ Meeting decision-making and acceptance of risk assessments from overseas jurisdictions.
• Creation of new pathways to expediate low-risk amendments including automatic adoption of new standards from select international regulatory systems, minimal check pathways and an industry self-substantiation pathway.
o Leverage other regulatory instruments, i.e., guidelines and codes of practice
o An industry self-substantiation pathway for very low-risk products (e.g., irradiated food with minimal dietary exposure impacts) would enable businesses to bring products to market without making an application to change food standards (or waiting for FSANZ to adopt relevant international standards). This would provide specific benefits for smaller food businesses that are less likely to be able to afford to apply for changes to food standards (even through streamlined pathways and more risk-proportionate processes).
• Broader education/information campaigns to assist with fuller consideration of potential non-regulatory risk management options, rather than a regulatory (standards setting approach).

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Steritech agrees that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System. Option 2 aligns with:
• Responsive, transparent decision-making
• Proportionate and effective responses to policy and compliance issues
• Continuous improvement of the system

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:41:08**

About you

What is your name?

Name:
Dianne Schumacher

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Dairy Companies Association of New Zealand (DCANZ)

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

1. Introduction
1.1 The Dairy Companies Association of New Zealand (DCANZ) appreciates the opportunity to make a submission on the Modernising the FSANZ Act: Draft Regulatory Impact Statement, 10th March 2021.
1.2 This issue is extremely relevant and significant for our members, because FSANZ legislation, and its associated statutory processes and structures, govern the food supply in New Zealand and Australia and contribute significantly to the regulatory integrity which underpins the safety and reputation of New Zealand food exports. DCANZ member companies collectively account for more than 98% of the milk processed in New Zealand and a majority of New Zealand's dairy exports.
1.3 The contact for this submission is:
Dianne Schumacher
Regulatory Manager
Dairy Companies Association of New Zealand
Phone: +64-27-612 3277

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

We consider the current policy problems cover the broad range of issues raised in previous discussions. This includes discussion on key issues raised by DCANZ previously – timeliness, resourcing and variations in implementation and enforcement.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The discussion paper mentions “industry can make unregulated claims regarding the environmental sustainability of a product” (Page 27). DCANZ considers this statement is incorrect. In New Zealand, as mentioned in the discussion paper, the Commerce Commission has a role in overseeing environmental claims. However, it is not mentioned that the Australian Competition and Consumer Commission (ACCC) have the same role in Australia. In fact, both agencies have provided guidance documents to industry on making claims in this area.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In New Zealand the Crown has obligations under the Treaty of Waitangi/Te Tiriti o Waitangi. The partnership between M■ori perspectives and the Crown under this treaty should be acknowledged in any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Maintaining the status quo would represent a lost opportunity to review a regulatory instrument which is now almost 30 years old. Such a review would provide the opportunity to enable both countries to optimise objectives and operations in the current and future food safety/suitability environment. We agree with the RIS statement that “The Act in its current form does not optimally support a strong, resilient and agile regulatory system”.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The status quo option is increasingly ‘out of step’ with the approach taken by international and other competent authorities. Additionally, the current FSANZ processes are highly prescribed and resource intense. The continuing risks associated with this situation include:
■ FSANZ food safety/suitability regulatory framework and standards lose international credibility.
■ Food innovation is stifled, and trade opportunities lost, resulting in lack of competitiveness for Australian and New Zealand food manufacturers.
■ Australian and New Zealand consumers will be prevented from accessing innovative and novel foods which are freely available in other countries.
■ the uneven playing field that is created due to differences in interpretation/enforcement would continue.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

DCANZ does not hold any data.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

DCANZ is not aware of any costs or benefits. which have not been considered.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

DCANZ does not hold any data.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See response to questions 4-6 above.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Not applicable.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

There are a range of suggested amendments under component 1 of option 2. While we are generally supportive of the recommendations, we do not support sustainability being included within the objectives.
We support aligning of public health protection across s3 and s18 as it ensures food safety is a maintained as cornerstone of the food regulatory system. DCANZ acknowledge that further discussion on definitions for the terms 'public health' and 'safety' will be progressed per previous consultation discussions.
DCANZ strongly supports the inclusion of trade within the objectives (18(1)). We do not support trade being subordinate to public health. In our view trade should have the same priority as public health with both being subordinate to food safety.
DCANZ strongly support criteria being established for the Food Ministers Meeting to meet in order to request a review. We strongly suggest that these criteria should be aligned with the objectives and matters which apply to FSANZ to ensure consistency in approaches.
DCANZ do not support sustainability being added to the FSANZ objectives as this is an area sufficiently regulated by other government organisations and we would not like to see resource diverted from more value-add activities.
With respect to the proposal to extend the statutory functions of FSANZ, DCANZ considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, if a role is defined for FSANZ regarding food fraud, care would need to be taken to ensure minimal overlap with competition watchdogs and enforcement agencies.
DCANZ supports FSANZ having to have regard to indigenous cultures and their traditional food practices when developing or reviewing food regulatory measures.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We do not support the broadening of FSANZ's objectives to include 'sustainability'. We believe that this runs counter to the FSANZ founding objectives around food safety and that sustainability issues are already being addressed by other regulatory agencies in New Zealand and Australia.
While we don't support sustainability as an objective for FSANZ, we do envisage FSANZ having involvement in sustainability issues from a food safety perspective, for example with regard to potential for contaminants from recycled packaging materials.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

We do not believe that the inclusion of 'sustainability' in the FSANZ objectives would result in greater focus in this area – rather it could result in further diffusion of the issue across regulatory agencies and result in greater confusion. Moreover, such an inclusion could result in FSANZ's key objectives around food safety being diluted and already stretched FSANZ resourcing being put under further pressure. The potential risk to industry of including sustainability in the FSANZ objectives is that it potentially diverts already limited resources away from matters which are core to FSANZ such as food safety, public health protection and trade – ultimately resulting in a negative cost impact to industry.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Extremely positive. We continue to advocate for a more risk proportionate approach and streamlined processes which are clearly articulated and enforced consistently across jurisdictions. There are a number of aspects under Option 2, component 2 that we would like to comment on. Specifically, we:
• Support use of a broader range of regulatory instruments and a decision-making tool.
• Agree that risk is an appropriate driver for processes to allow for a flexible approach.
• Do not support automatic adoption of standards. Preference is for a minimal check pathway to balance resource with stakeholder input to ensure standards are appropriate for Australia New Zealand.
• Support additional pathways for low risk products, such as self-substantiation.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

We support the inclusion of a provision permitting the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making. We envisage that such decisions could include:
■ Low risk labelling and composition
■ Low risk approvals of additives and processing aids.
DCANZ is concerned that if delegation was decided on a case-by-case basis, no improvements in efficiency would be seen. We, therefore, support the development of a clear decision-making framework where lower risk decisions (e.g. processing aids) are automatically delegated to the FSANZ board.
It is important that decision-making bodies have the same criteria for objectives as FSANZ in reviewing food regulatory measures. This ensures alignment across groups. For example, A1155 where FSANZ had regard for different criteria from that of the Forum which resulted in a different decision being taken from that which was recommended by FSANZ.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

From a New Zealand perspective:
■ Self-assessment protocols related to such areas as heath claims, novel foods and nutritive substances.
■ Suggest that collaborative approaches are explored, for example partnering with other industry and non-industry agencies that might have expertise in the subject area to contribute to development. Consultation provisions are recommended in the development of such Codes and Guidelines.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

DCANZ does not hold any data.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

It is extremely difficult to quantify such savings due the wide variety of situations that this could impact. However, we would expect savings in the areas of:
■ Industry cost of compiling dossiers.
■ FSANZ cost in considering applications.
■ Reduction in the time taken to get new products onto the Australia New Zealand domestic markets.
■ Reduction in the time taken to get new products into export markets.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The concept of 'regulatory sandbox' appears on the surface to be a positive and innovative step forward in the regulation of food safety/ suitability. However, the RIS does not provide sufficient information as to how a regulatory sandpit would operate in practice (e.g. degree of regulatory oversight, the use of sandpit results to inform future regulatory developments). We are, therefore, reluctant to make final comment as to whether this approach would represent a positive, negative or neutral outcome for our sector. We also recommend that further development of this concept is considered as a second-tier innovation rather than an immediate priority.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

It is difficult to confirm without better understanding of the potential process, however, it may be appropriate to apply the regulatory sandbox concept to novel foods which are considered traditional (not novel) in their country of origin.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The lack of likely cost projections related to Option 2, Component 4 within the RIS means that it is difficult to determine whether this would represent a positive, neutral of negative outcome. We have particular concerns around duplication of functions with existing intelligence gathering agencies within both countries and inadequate resourcing to fully enable this function (resulting in further stretch (and delays) to existing resources and functions) and scoping of such intelligence gathering.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

See response to Q23 above.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

We believe, that if managed appropriately, such collaboration could result in a very positive outcome for Australian and New Zealand industries, regulatory agencies and consumers. The sharing of knowledge and challenges in an appropriated scoped framework would prevent duplication of work and ultimately facilitate more efficient decision making.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

We submit that, such information should be provided on an open access basis. If payment was to be required, industry would make a case-by-case decision as to the value of the information and alternative sourcing options. There are also issues around charging for services which may at times be seen as a normal components of standard / guidance development.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We submit that Option 2, Component 6, as described, would result in a negative outcome for New Zealand stakeholders and does not necessarily reflect the sovereign status of New Zealand. We appreciate that there may be advantages in reducing the FSANZ Board size and refining nomination and appointment processes, but this should not be considered at the expense of the Board's ability to address New Zealand specific challenges.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We are supportive of many of the components within Option 2. We do not however, unreservedly support components 4,6, and specifically would require further information on Component 3. Key risks include:
■ All new functions would need to be adequately resourced resulting in already slow approval and standard development processes grinding to a near halt.
■ Inadequate and/or inconsistent enforcement activities across jurisdictions undermine the application of Component 2.
■ A FSANZ focus on intelligence and data (component 4) should not develop into a financial driver of FSANZ functions. FSANZ should retain a regulatory function as the primary objective.
■ Some existing functions are not reviewed and streamlined, resulting in continuing delays in carrying out core FSANZ functions.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

As mentioned previously, trade considerations have not been significantly mentioned in this RIS. This is significant as both Australia and New Zealand are major food exporters. There are both costs and benefits to Australian and New Zealand food exporters associated with many of the components described in this RIS. The considerations include credibility of FSANZ with overseas competent authorities, increased alignment with other national/regional risk assessments and standards and international competitiveness in the export of innovative products and products in compliance with the standards of the importing country.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No, we cannot quantify these opportunities, other than to say that we consider these will be significant.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

It is not clear what types of activity might be broadened to incur costs. In any case, DCANZ does not consider that FSANZ should be providing for further FSANZ work to be cost recovered. This is because there is a risk that it would create unequal access to the legal system.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The current costs associated with cost recovered activities are significant and it is likely that these services are not utilised by small to medium enterprises (SME) because of this. Increased cost recovery would likely further reduce SME's use of such services.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Not applicable as DCANZ is an Association and does not make applications. DCANZ does however actively engage with the Food Regulation system, for example by participating in consultations.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

■ Clarity of responsibilities between and within agencies.
■ Lack of regulator knowledge around technical and practical aspects of dairy manufacturing.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Possibly more likely, particularly with respect to provision of intelligence and engagement with other competent authorities.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

With respect to option 3 component 1, whilst we suspect this component could be positive for Australian jurisdictions, we feel that this would result in a neutral to negative outcome for New Zealand food businesses. The current New Zealand food recall generally operates well. A movement of this function to FSANZ would create more difficulties and layers of decision making with no benefit. It is also not consistent with the sovereignty of New Zealand or Australia.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No. As per our previous comments, New Zealand already has a regulatory recall system which works effectively.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

In general, positive but this would be dependent on cost, adequate FSANZ resourcing and realistic timeframes for responses.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No not specifically

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

No this is not a valuable suggestion for New Zealand, where currently enforcement responsibility in these issues sits within one agency (MPI). It would also impinge on New Zealand's sovereignty.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

Negative. New Zealand's 'one agency approach' works well and minimises confusion.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No – DCANZ has no information on this.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative –current MPI activities in this area are agile and appropriate to the New Zealand dairy industries interests.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Refer to our earlier response to Q39. Trade issues and benefits to exporters, Australia Inc and New Zealand Inc do not appear to have been adequately considered.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support cost recovery for these functions.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The draft aspirations documents fail to highlight the importance of trade.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option Two: Component 2 - Facilitating risk based approaches to developing or amending food regulatory measures.
Option 3: The additional components of Option 3 are not priorities within the New Zealand context.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

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Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

2. Summary
2.1 DCANZ supports the intent of this draft Regulatory Impact Statement (RIS), to ensure that the FSANZ Act and supporting framework provides a robust, responsive and credible food regulatory system.
2.2 We see this review as an opportunity to cement in the principle of FSANZ as an independent, science-based body. We also look to the FSANZ Act review process to address longstanding concerns around flexibility, efficiency, timeliness, prioritisation, approvals and standard setting processes and resourcing. A more streamlined FSANZ structure working within a focused legislative framework will better meet both consumer and food industry expectations and enable innovation and trade with other countries.
2.3 Resourcing of FSANZ adequately to meet current and any enhanced function must be an explicit consideration throughout this review.
2.4 For the most part New Zealand implementation of the current regime is working well, and although we acknowledge that there may be issues within Australia regarding implementation and enforcement effectiveness and consistency across all jurisdictions, this is not our experience in New Zealand.
2.5 Many issues, such as consistent enforcement of the health claims requirements, proposals and the food-medicine interface, have limited impact on New Zealand dairy processors. We suggest an 'Australian only' solution, designed to address concerns in Australia, may be more appropriate for the majority of these issues, noting that such a solution would necessitate alignment on interpretation and enforcement between Australia and New Zealand on regulations that apply across both countries.
2.6 DCANZ is extremely concerned that the draft Regulatory Impact Statement does not make clear reference to the importance, to both countries, of a strong and credible food regulatory framework which facilitates food exports. This issue was raised in our previous submission regarding the FSANZ Act review. Moreover, within the RIS itself, it is stated that the general objectives of the EU and Canada include statements such as: "Facilitate global trade of safe feed and safe wholesome food…." and "enhancing the international market opportunities". DCANZ strongly advocates for the inclusion of such a trade facilitation core objective within a reviewed FSANZ Act.
2.7 With respect to proposals contained within the FSANZ Act Regulatory Impact Statement, DCANZ:
i. Believes FSANZ should continue as a predominantly food safety/suitability standard setting regulatory body.
ii. Does not agree with the suggestion that the FSANZ scope or mandate should be expanded (as proposed in components 1-4 of Option three), at least not in the New Zealand context.
iii. Has specific reservations about FSANZ taking additional functions (including long term health and nutrition issues), noting that if these additional functions were to be undertaken significant additional resources would be required to support these.
iv. Seeks clarity about the regulatory mandate of FSANZ vs. other government agencies to ensure that duplication is avoided.
2.8 With respect to specific proposed FSANZ functions and processes, DCANZ:
i. Does not support FSANZ representing New Zealand in international fora such as Codex Committees.
ii. Does not support FSANZ having an enforcement role within New Zealand. New Zealand is a sovereign nation and should retain responsibility for enforcement functions.
iii. Does not support a FSANZ function involving unrestricted information sharing between jurisdictions. New Zealand and Australia are sovereign nations and unrestricted sharing is not appropriate given the competitive nature of our export food trade.
iv. Supports consideration being given, within the review of the FSANZ Act, to the enablement of FSANZ to develop Standards which allow for industry self-assessment.
v. Does not support the inclusion of 'sustainability' functions into the scope of FSANZ's work. Such an inclusion would require significant additional resource and dilute focus on core food safety/suitability responsibilities.
vi. Is initially supportive of the 'sandbox" concept but feel unable to fully endorse this approach without further information on the proposed scope, application and

limitations.
2.9 On FSANZ structure, DCANZ:
i. Agrees consideration should be given to FSANZ structures and the operation of the Board. However, efficiency and effective representation (particularly New Zealand representation) rather than cost saving, should be a primary concern in determining Board size and composition.
ii. Does not generally support the expansion of cost sharing which would have a disproportionate and innovation stifling impact on industry. Cost sharing proposals are unlikely, by themselves, to fundamentally address current delays in the existing system.

Upload any supplementary information here. :
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Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:41:18**

About you

What is your name?

Name:
Dr Geoffrey Annison

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Australian Food & Grocery Council

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

There are over 180 member companies, subsidiaries and associates who together comprise 80 per cent of the gross dollar value of the processed food, beverage and grocery products industries.

With an annual turnover in the 2018-19 financial year of $127.1 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 15,861 businesses and accounts for over $75.1 billion of the nation's international trade. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry made $2.8 billion in capital investment in 2018-19.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing 31.4 per cent of total manufacturing turnover in Australia.

The food and grocery manufacturing sector employs more than 274,800 Australians, representing 32.2 per cent of total manufacturing employment in Australia. Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of the total persons employed 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 is recognised and factored into the Government's economic, industrial and trade policies.

In Australia, the food and beverage (grocery was not included in the Government's strategy but is recognised as a vital industry) manufacturing sector has been confirmed as an essential service and a National Strategic Priority. The Australian Government through its recently announced Manufacturing Strategy has challenged the sector to develop an industry roadmap describing how it will contribute to the post-COVID-19 recovery through expanding manufacturing, growing

jobs, boosting exports and enhancing sovereign capability across the sector.

Food and beverage manufacturing plays an integral role in Australia's economic and social fabric. It is the lifeblood of many regional and rural communities. As such it is well placed to do the heavy lifting in the Manufacturing Strategy through its size, its know-how in adding value to the commodities of the agricultural sector, and to leverage the reputation for safety and quality among consumers in overseas markets.

This submission has been prepared by the AFGC and reflects the collective views of the membership.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The AFGC identified one important additional Policy Problem in the preceding section of this submission and proposed the following:

"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."

The AFGC considers, however, that there are a number of other important Policy Problems which might be considered. These include:

1. There is no single preeminent Authority in Australia governing food regulation. The draft RIS has identified a number of issues which could be potentially resolved if a 'National Regulator' were established in Australia. Such an agency could, for example, address issues such as helping to define and determine whether particular products are 'foods' or 'drugs' at the food drug interface as described in the draft RIS (pages 44-45);

2. There is no clear definition of the scope of regulatory dealings with food that the FSANZ Act covers. Food is defined in the Act, including defining that it is not being a therapeutic good within the meaning of the Therapeutic Goods Act 1989. However, food may be regulated in many ways, and indeed it is. Food products are subject to regulations from other regulatory agencies including the National Measurement Institute, the Australia Competition and Consumers Commission and the Agricultural and Veterinary Medicines Authority. Moreover, there are numerous additional agencies at State and Territory level which regulate aspects of food production, processing and sale. Some of the regulatory systems address sustainability (see below).

Recommendation 4 - The AFGC recommends that the FSANZ Act be amended to restrict FSANZ's regulatory scope to dealings with food as a consumed product encompassing and limited to the food safety aspects of food processing and handling, and to food compositional requirements and food labelling requirements which may be required to assist the nutrition and health of consumers.

This recommendation, if adopted, will make it clear that FSANZ's activities should not extend to areas such as sustainability and ethics. The arguments supporting this are presented below.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

As the draft RIS notes (page 26, penultimate para.):

"FSANZ's objectives are currently mute on issues of food sustainability."

There, however, are a number of regulatory agencies which impose regulatory constraints on the food industry to achieve sustainability outcomes. And, these constraints are increasing.

For decades, the food manufacturing sector, along with many other industries, has been subject to regulations protecting the environment. These have targetted primarily the disposal of waste from manufacturing such as effluent discharges into water ways or materials allowed into landfill.

Since 2016, Australian State and Territory Governments have been introducing Container Deposit Schemes which impose a 10c deposit on beverage containers which can be redeemed by consumers at collection centres. More recently, legislation has been introduced banning the use of some 'single use' plastic products which will affect some products in the food industry. These measures are targetting litter, in particular, but also seeking to reduce the escape of plastics into the environment. The Commonwealth Government is also actively promoting greater recyling of plastics and other packaging across industry sectors through the National Packaging Targets. Whilst voluntary, there is some likelihood that if good progress towards targets is not made, mandatory requirements will follow.

The draft RIS suggests that (page 27):

"…industry can make unregulated claims regarding the environmental sustainability of a product."

This statement is incorrect. All credence claims made on food labels are subject to the Australian Competition and Consumer Act (2010) which forbids misleading and deceptive conduct, including in the labelling of food and other consumer products.

Many food industry sectors already have a long history of commitments to voluntary actions to protect the environment. For example, Australian dairy manufacturers have set 2030 sustainability targets for greenhouse gas emissions intensity, consumptive water intensity and waste-to-landfill intensity. Dairy Australia has been reporting the progress by against sustainability targets since 2011.

As the draft RIS notes, there are many aspects of agrifood practices which have an environmental impact. The draft RIS fails to note, however, that there is already a plethora of policy, regulatory and self-regulatory instruments which address those concerns. If more regulation is needed, it should be through those existing arrangements rather than expanding the role of FSANZ into areas in which it has no experience, and no technical competencies, and which would require considerable extra funding to resource.

The AFGC does not support sustainability as an issue that should be addressed by FSANZ. The AFGC considers that an issue of such importance and far-reaching magnitude should the responsibility of the Department of Agriculture, Water and the Environment (DAWE) and other departments and agencies.

Recommendation 5 - The AFGC recommends the FSANZ Act not be amended to expand FSANZ's responsibility to issues related to sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The AFGC is unaware of any examples of the current food regulatory system having regard to indigenous culture and food expertise in amendment of the FSC. As noted in the draft RIS, and as the AFGC understands, a history of safe use of a foodstuff in other cultures, including in indigenous cultures, may be included in the risk assessment of a novel food under Standard 1.5.1 Novel foods. Permitting a novel food from an indigenous culture may require, for example, specific food preparation directions for the safe use of the food.

Such an example is the production and milling of native grains (known as Dhunbarr) which have been grown and eaten for thousands of years by Indigenous peoples, and therefore may be considered a traditional rather than a novel food. Non-traditional methods of processing are applied for cultural reasons. Research by the University of Sydney is investiging and consulting with Gomeroi people to determine if current technologies could be applied to ensure holisitic success of business ventures.

The AFGC is aware of the sensitivity around issues such as the appropriation of indigenous culture's intellectual property which might include food types and their associated cuisine. The AFGC, however, does not have a formal position on the issue at this stage.

The AFGC does, however, see value in FSANZ consulting with appropriate indigenous organisations and communities when raising proposals or assessing applications which may have implications for indigenous cultures and their food expertise. The FSANZ Act might be amended to specifically call out this consultation requirement or it may be equally well served simply by FSANZ including such considerations in its business operations.

The AFGC notes that lessons may be learnt from the New Zealand Government in the way that it recognises M■ori culture and food expertise through the Crown's obligations to the Treaty of Waitangi/Te Tiriti o Waitangi. Additionally, The Public Service Act 2020 delivers a legislative framework that highlights the role of the public service at all levels in supporting the partnership between M■ori perspectives and the Crown and extends to trans-Tasman programs and regulatory agencies where the New Zealand Government is a member or partner.

A tangible example of this is the Strategy for New Zealand Food Safety 2019-2024 and Action Plan produced by the Ministry of Primary Industries which focuses on the future and how risks would be effectively managed while continuing to deliver for New Zealand consumers and food business. The Strategy has a chapter (chapter 4) dedicated to working in genuine partnership with M■ori in which it states (page 12)

"New Zealand Food Safety/Haumaru Kai Aotearoa seeks to actively build stronger relationships and partnerships with iwi/M■ori to support economic, environmental, social and cultural aspirations. We will ensure that iwi/M■ori – as kaitiaki (guardians), as hunters and gatherers of indigenous and wild food, as consumers and as food business owners – are properly involved in development of the regulatory systems that influence their broad span of food-associated activities. We will continue to improve our ability to communicate information on food standards and guidelines so that M■ori food businesses and marae based initiatives grow and prosper."

The AFGC would welcome the opportunity to have further discussion on the issue either as part of the current review of the FSANZ Act, or through an alternative policy development initiative.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The AFGC considers Option 1 would represent an exceedingly negative outcome for the sector.

The draft RIS has identified three major Policy Problems. In addition, the AFGC has identified further policy problems (see earlier). Clearly, retaining the status quo would not address those policy problems at all.

In an earlier submission to the current review of the FSANZ Act, the AFGC provided compelling argument for the update of the FSANZ Act and re-states key elements below.

MAJOR REFORM OPPORTUNITY

The AFGC considers that the current review of the FSANZ Act as well as the concurrent reviews of other elements of the food regulatory system, represent a rare opportunity for major reforms of the food regulatory system.

The draft RIS proposes many reform ideas to address problems most of which derive from the institutional arrangements governing the food regulatory system. Legislated processes and timelines, split responsibilities for standards and enforcement, lack of a clear hierarchy in decision-making requiring consensus outcomes, differing bureaucratic priorities, and imbalances in regulatory cost between jurisdictions has resulted in a food regulatory system which is ill-suited to support the role of the food industry in the immediate to long-term future.

The review is a once-in-20 years opportunity to reset the ANZ food regulatory framework creating a new environment conducive to industry growth and profitability, to the benefit of wider community and individual consumers.

The Government's deregulation agenda

The Australian Government has strong deregulation policy agenda . The agenda's objective is:
"ensuring that, where regulation is required, it is implemented with the lightest touch - that it is designed and applied in the most efficient and timely way, with least cost on businesses."

More specifically it is:
"reducing the regulatory burden for food manufacturers in an initial focus on exporting."

The food and beverage manufacturing sector has a strong record of exporting greater volumes of value-added food products in recent years. Strong export growth can only be achieved through having a strong competitive and profitable domestic market for food companies to use as platform for export growth. Regulatory burden in Australia should be as low as possible whilst maintaining high levels of consumer protection. Best practice regulation includes preparation of regulatory impact assessments to ensure the use of regulations is fully justified by the magnitude of the benefit. The development of food standards requires regulatory impact assessments. However, on occasions FSANZ determines such assessments are not required, although the basis for these determinations is obscure and not clear to stakeholders.

COVID-19 recovery – relevance to the current review

The need for sensible regulation of the food industry has never been stronger due to the current COVID-19 pandemic. The pandemic has pushed the economies of both New Zealand and Australia into deep recessions. Governments in both countries are looking to the food manufacturing sectors to assist with the recoveries of their respective economies. In Australia food manufacturing has been identified as a National Strategic Priority. It has been charged with developing an industry 'roadmap' for reinvestment creating jobs, improving productivity, and boosting exports. In addition, the Government wants the industry to become more 'resilient' to pandemics and other possible shocks by increasing sovereign capability i.e. moving to more manufacture onshore. A clear corollary is that the regulatory burden across the industry must be minimised.

In March 2021, the Australian Government released a Modern Manufacturing Strategy which included a Food and Beverage National Manufacturing Priority road map . The road map describes a path to growth for the sector based on investments to make the sector more innovative and efficient. The success of the road map will be dependent on many factors, not least of which will be Australia having a supportive food regulatory system which encourages innovation and growth.

Institutional Arrangements

At the beginning of the COVID-19 outbreak in Australia, Prime Minister Scott Morrison convened a National Cabinet with Premiers and Chief Ministers of the States and Territories. In addition, a National COVID Coordination Committee (NCCC) of eminent persons to advise the National Cabinet and 'remove roadblocks' to a national response to the epidemic was set up. The National Cabinet and NCCC gave clear indications that the Council of Australian Government (COAG) and its bureaucratic structures and mechanism were poorly suited to rapid decision and actions needed to tackle the national emergency. A report, commissioned by the National Cabinet, was released which confirmed the unwieldy nature of COAG, including its Ministerial Forums. The Review of COAG Councils and Ministerial Forums ('the Conran Review") opined that most, if not all, formal COAG Councils and ministerial forums were
"inefficient and often ineffective with:
• Complex convoluted arrangements
• Slow processes with over-engineering of issues
• Excessive focus on secretariat functions
• Significant funding expended on low priority projects with indeterminate timeframes and excessive secretariat costs including meeting arrangements and catering."

The review went on to group COAG Councils and Forums which should either be maintained, disbanded, or convened for specific tasks (rather than adhering to a schedule of meetings). The Forum of Food Regulation (now called the Food Minister's Meeting; FMM) was included in the latter group. If the recommendations of the review are acted upon there will be a substantial upheaval in the food regulatory system. Regulatory processes would be streamlined, with a smaller bureaucracy and a focus on outcomes. As the Conran Review concluded. successful reform

"will come down to everyone ... maintaining a strong focus on delivering priority outcomes."

The current Review of the FSANZ Act and the wider food regulatory system can gain authority from the Conran Review. It provides good argument that bureaucratic processes for Ministerial Forums are vastly overdone. This depiction can be readily applied to FMM.

For example, the FMM still has to formally sign off on every new processing aid amendment to the FSC recommended by FSANZ. There can be little justification for these trivial matters to command the attention of FMM Ministers. The same can be said for approvals of foods derived from gene technology - approvals outnumber rejections 87 to zero.

As the Conran Review describes, Ministerial Forums should determine fundamental strategic issues for the food regulatory system. Strategic issues will be identified, at least in part, by the objectives of the FSANZ Act and might include:

1. Bringing clarity to how the food regulatory system might support the food industry, rather than simply regulating it, through practical application of the principle of proportionate regulatory response;

2. Developing a deeper understanding of how the food regulatory objectives might integrate with broader public health objectives through encouraging innovation and voluntary guidelines to better products, rather than hurdles in the form of prescriptive and restrictive pre-market assessments;

3. Fostering a more collegiate approach among the stakeholders recognising the presumably shared objective of a food system able to meet the nutritional and lifestyle needs of all Australians. There is already precedent for this as the Health Star Rating front of pack nutrition labelling system was developed through a partnership between representatives from Government, public health, consumers and industry.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The AFGC considers that the current review of the FSANZ Act draft RIS is the first concrete step towards major reforms of the food regulatory system. Simply put, it comprehensively demonstrates substantial room for improvement in how food regulation can be improved in Australia.

The food industry carries a great risk if reforms are not forthcoming. Regulatory burdens will increase, limiting the food industry's ability to innovate and compete.

The wider community, however, shares that risk. An antiquated food regulatory system will result in a food manufacturing sector unable to meet the needs and expectations of the community through domestic production. Furthermore, imports will also be hampered in their ability to adapt to changing consumer needs as they too are subject to regulatory restraints.

If reform does not occur, it is a missed opportunity and will result in food regulatory system that is antiquated, inefficient, and not modernised to address the current dynamic food supply and international regulations approaches or enabling economic growth. In short, everyone is a loser if substantial reforms are not enacted. Furthermore, failure to reform appropriately will miss a rare opportunity to 'future proof' the regulatory framework, in order to permit its resilience and relevance to successfully represent an innovative food supply not only today, but into the future.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

The AFGC does not possess any data as requested. It is obvious, however, that delays result in opportunity costs to industry to profit from the new business developments to be created by amending the FSC. Moreover, the wider community misses out on the spill-over benefits from the enhancements to the food system which accrue for the continuous improvements in products and processes of the industry.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The AFGC considers the draft RIS is comprehensive in identifying both costs and benefits. The AFGC is not in a position to comment on the magnitude of cost or benefits in the quantitative analysis being aware of the difficulty in obtaining data in this regard. Furthermore, the AFGC has not identified any further costs and benefits which need to be considered in the Option 1 Status quo.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The AFGC does not possess any data as requested.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The primary risk is that food regulation is not keeping pace with the food system

The AFGC supports the continued regulation of food and beverages. However, regulation must keep pace with the changing food supply and community expectations. Innovation is a key here – food and beverage manufacturers who fail to innovate and keep up with the global pace will lose relevance and lose business. This impacts the national economy. The regulatory environment must support innovation towards a healthier and more relevant food supply.

Food production and manufacture carries with them some risks. Historically, foods have been vectors of many infective diseases and hazardous substances. These may occur naturally, but they can also result from the mishandling of foods and human ignorance and/or negligence. This is the fundamental market failure which food regulation addresses.

The industrialisation of economies and urbanisation of populations has led to the development of a highly sophisticated, technically complex food industry. It shares the food regulatory system's fundamental objective of ensuring foods sold to consumers are safe and that consumers have sufficient information about them for informed choice. It should be appreciated, however, that the food regulatory system exists alongside consumer law, which also protects consumers, and indeed corporate law, which also places obligations on companies to behave responsibly in a way which protects the business.

There is, however, particularly in light of the COVID-19 outbreak, a legitimate question as to food regulations which are "must have" and others which are potentially optional. At the beginning of the COVID-19 outbreak severe concerns were raised regarding the functioning of global supply chains for many industries including the food and grocery manufacturing sector. This may have led to disruptions of food manufacturing in Australia leading manufacturers to seek alternative food ingredients and food additives to keep. This in turn may have led to variances in product compositions and consequently minor inaccuracies in product labels. At the time there were concerns that packaging itself was in short supply limiting food companies' options for changing packaging to meet the new composition. The AFGC sought agreement from the Food Regulation Standing Committee (FRSC) for an agreed framework under which industry would be allowed minor labelling non-compliances, as long as there were no adverse public health risk and consumers were not significantly misled as to the nature of the product they were buying.

FRSC readily accepted the notion that some regulatory requirements are not absolutely critical for consumer protection and do not need absolute compliance. Updating the FSANZ Act, in conjunction with the other reviews of the food regulatory system, provides an opportunity to substantially reduce the regulatory burden of current food regulations by reassessing need for some standards and whether they align with the concept of a proportionate regulatory response.

The AFGC is very concerned that not updating the FSANZ Act will bring other food regulatory system reviews and reform to grinding halt. The AFGC sees reforming the FSANZ Act as the lynch pin to comprehensive reform and it simply must proceed.

Recommendation 6 - The AFGC recommends the review and reform of the FSANZ Act continue, recognising that other food regulatory system review and reform activities currently underway will be critically dependent on an updated FSANZ Act.

Inadequate resourcing of FSANZ

The AFGC considers the draft RIS should address the issue of resourcing of FSANZ.

FSANZ is a comparatively small agency and in recent years it has seen its workforce shrink by almost a third. There is no indication, that the workload in amending the FSC has diminished. FSANZ may have reduced some discretionary expenditures, but it is inevitable that some impact on FSANZ's core business has also occurred.

The draft RIS should address the implications of FSANZ's ability to meet their statutory functions within the resources available to the organisation. The corollary to this is that the RIS should also consider the resource implications on any recommendations (options 2 and 3) to expand FSANZ's statutory functions.

Poor prioritisation of legislated objectives issue for the system

The AFGC supports the current objectives of the food regulatory system in their broad intent. The AFGC considers, however, that greater clarity is required regarding the potential prioritisation of the objectives and the fundamental requirements which must be met before regulation is imposed.

Generally, industry stakeholders have a good grasp of the concepts of good regulatory policy. The AFGC notes, however, that public health stakeholders do not always have a good grasp of the role of food regulation. The Commonwealth Department of Health (DOH) has attempted to address this by hosting a workshop of public health stakeholders in early 2018. The purpose, as the AFGC understands it, was to inform the stakeholders that regulation was not the only policy instrument to address public health issues. It also sought to explain the concepts of best practice regulation guidelines to which the food regulatory system should adhere.

It is understood that the DOH conducted the workshop to address the misalignment across the stakeholder groups from the public health sector which was undermining the food regulatory system. In some cases, food regulatory development has been highly contentious with public health and industry groups appearing to be diametrically opposed regarding the nature of regulation to be imposed. With a better understanding of what the regulatory system can, and cannot do, and what the processes allow, more agreement on regulatory options is likely. Thus, the food industry can, and does, through both voluntary and mandatory actions support public health objectives. The AFGC considers the industry can continue to play a strong role in this regard through a combination of product offering and comprehensive provision of information and continues innovation in products with enhanced nutritional attributes.

Need to define 'public health' and 'safety' in legislation to affirm the inclusion of long-term health and nutrition as a core objective

The rising levels of obesity and associated non-communicable diseases (NCDs) such as coronary vascular diseases and diabetes and the dietary factors related to their aetiology has led to a broad public health policy debate regarding the possible role of food regulation in their mitigation. To date, however, the regulatory responses have been restricted primarily to:
1. Requiring food labels to carry a nutrition information panel (NIP) and ingredients list, with some exemptions;
2. Restricting the health claims to products which pass the Standard 1.2.7 Nutrient Profiling Scoring Criterion and for high level claims have received pre-market approval by FSANZ.

Of course, public safety and public health are very broad terms – safety usually relates to protecting the community from hazards causing acute harm, whereas public health is thought of in longer time frames with more insidious or chronic impacts. A similar approach might be applied when it relates to food but there are

several other key differences when considering or defining public safety and public health consequences of food consumption. These differences are highlighted in the table (table 1) below, which compares and contrasts the concept of food-related illness – essentially food poisoning of various types – and diet-related diseases.

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 personal choice, and challenging to regulate. Regulation can assist, however, through 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, 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.
There are essentially five regulatory levers which Governments can pull to modify diets at the population level. All, of course, must pass the test of meeting good regulatory practice guidelines. They are:
1. Fiscal measures such as subsidies or taxes. This option is not available to FSANZ;

2. Marketing practices. Advertising and marketing in Australia are the responsibility of the Australian Communications and Media Authority. Its regulations are supported by co-regulatory and self-regulatory codes of the Australian Association of National Advertisers. The codes include guidance on the responsible marketing of food products to children. The marketing of over-the-counter drugs is also subject to regulations (under the TGA) and a co-regulatory guidance under the industry association Medicines Australia;

3. Food labelling. FSANZ has developed standards which both restrict and require nutrition information on food labels which are designed to assist consumers construct healthy diets;

4. Food availability. There are no formal restrictions on the sale of food designed to modify the diet of the population for better public health outcomes. Notwithstanding this, there are restrictions on the foods which can be sold in venues owned by governments. Departments of Health around Australia have produced guidelines for the foods which can be sold through school canteens and food outlets in government-owned or leased buildings. Interestingly, these guidelines differ quite substantially reflecting the lack of agreement among public health officials on nutritional profile criteria to determine healthy and unhealthy foods. This uncertainty is likely to challenge the development of any formal regulatory measure;

5. Food composition. Theoretically at least, regulations could be developed restricting the nutritional composition of foods. It would require category-by-category approach resulting in maximum and possibly minimum levels of selected nutrients in a very large number of products. It is beyond the purpose of this Submission to describe exhaustively the challenge to regulators and industry which this would represent. Suffice it to say, it would be a herculean task.

Particularly challenging is determining how well-suited food regulation is to address public health issues, and particularly the rising incidence of overweight and obesity and associated NCDs. The poor health outcomes are diet-related, but many other factors also contribute to their development. Actions by the food industry can assist in addressing these issues and indeed the food industry has a long record of:
1. Product reformulation. It is over 50 years since the first polyunsaturated margarines were developed and put into the market in response to advances in nutritional science suggesting a link between dietary saturated fat and coronary vascular disease;
2. Product choice. The food industry provides a wide range of products including low energy, low sodium, low sugar, high fibre variants from which healthy diets can be constructed;
3. Product labelling. The industry has included nutrition information panels on products for decades preceding the mandatory requirement for NIPs which commenced with the new ANZ FSC. In addition, the industry has made nutrient content and general level health claims on a voluntary basis to assist consumers understand the nutritional contribution products can make to a diet;
4. Consumer education. The food industry has assisted the promotion to consumers of healthy eating advice by promoting the Australian Dietary Guidelines on pack, in promotions, and on websites for many years, and will continue to do so.
The AFGC is unaware of any convincing scientific evidence which directly links food regulatory interventions above and beyond industry's extensive self-regulatory activities to an improvement in NCD public health outcomes – i.e. a reduction in the incidence of diseases such as obesity.
Thus, there is insufficient evidence to support including a definition of 'public health' in legislation to affirm the inclusion of long-term health and nutrition as a core objective. Indeed, if such a core objective were to be included in the FSANZ it would certainly result in severely regulatory restrictions of consumer choice as 'diet-level' nutritional advice was shoe-horned onto individual product categories. Notwithstanding this, the AFGC recognises that the food industry at the company level can, and indeed, does operate in harmony with the food regulatory system supporting public health objectives through continuously reformulating products and modifying claims, in response to new nutritional wisdom.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC considers Option 2 would have a positive outcome for the food manufacturing sector. As noted in the draft RIS, it would address the Policy Problems 1 and 2. Furthermore the AFGC considers it would address the major policy problem which the AFGC has identified earlier in this Submission vis:

"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."

As the draft RIS specifies (Figure 3, column 2, box 3) Policy Problem 1 is resolved to inter alia result in:
“Processes and decision-making arrangements to amend food standards are reconceived to support more flexible and risk proportionate approaches.”

Since the commencement of the current food regulatory system, three major changes (and many more minor ones) have occurred over the last 20 years which are challenging the current regulatory system. They are:
1. Greater consumer interest not only in the nature or properties of foods they purchase and consume but also in where and how they are produced. These have been termed ‘values’ issues as they may be more directly related to consumer opinions and philosophies. An example is ‘free-range’ food production which has no direct impact on the wellbeing of consumers. Government through the ACCC has regulated the conditions under which free-range claims can be made;

2. A rise in the incidence of overweight and obesity, and associated NCDs such as diabetes has led the FMM and the broader community to consider how this and other public health challenges might be addressed through food regulation;

3. The IT revolution providing consumers the means to seek, and indeed to demand, all the information they need about the foods they eat, and where they come from. Conversely, companies have almost unrestricted opportunities to communicate directly with consumers through their websites which can be accessed almost at any time by consumers through their smart ‘phones.
To address these challenges, the AFGC supports a comprehensive and rigorous review and modernisation of the food regulatory system to ensure it is fit for purpose in serving all stakeholders well.

Improve regulatory responsiveness

The AFGC contends that the food regulatory system is neither agile, nor responsive.
It is relatively effective at processing and responding to the ‘routine’ but has proved to be ineffective and almost moribund when stretched to be innovative. The AFGC has highlighted these shortcomings in previous submissions to the current food regulation system reviews. Suffice it to say here, that the AFGC strongly supports the need to improve the responsiveness of the food regulatory system. This is not because there are any pressing major reforms which are required due to an urgent public health need.
As stated previously, the food system in Australia, serves the community well. Rather, it is simply that the regulatory system can do better. It is desirable and indeed becoming more necessary to remove some of the regulatory brakes on the food industry in Australia. And it would certainly assist industry, and the confidence of consumers it serves, if regulation and meeting the needs of consumers was modernised and took full advantage of the opportunities.

Align definitions and powers in legislation between therapeutic goods and foods

The AFGC considers that the regulatory arrangements at the food/drug interface are important.

However, the AFGC also considers that there is a danger that the regulatory arrangements could be overengineered to exacerbate the problem rather than simplify it. Proposals to clarify what is a food and what is not in any legislative changes will need to be approached with some caution. An example of this conflict is caffeine. FSANZ permits food to contain caffeine as an ingredient in a solid at 5% and a sports powder at 5g serve has 4.9% caffeine, this equates to 245 mg. TGA regulates that caffeine should not be >100mg/3hr and no more than 400mg/day. So, one may be compliant with FSANZ and not with TGA – this is difficult for food manufacturing to navigate.

FSANZ’s approach for setting its workplan and resourcing’ problems for stakeholders

The primary objective of food standards is to protect the interests of the consumers. It is very much a public good function. In doing so, food standards create inter alia a blanket prohibition on anything being added to food, except other foods and a blanket prohibition (through Standard 1.2.7) on the provision of truthful, substantiated information about foods which might help consumers construct healthy diets and protect and promote their good health. When granting approvals for novel material (foods, nutritive substances, additives, etc.) to be added to foods or for nutrition or heath claims to be made on foods, industry is essentially providing information which removes the justification for the prohibition to be maintained, allowing industry to go about its business in bringing new foods to consumers and telling them about it.

Against this backdrop, it is essentially unfair to propose that FSANZ is granting industry a particular advantage through approvals; rather they are removing regulatory obstacles to industries’ endeavours which ultimate benefit the whole community. There is little case for FSANZ to cost recover through imposing charges on industry for amendments to the food standards codes.

For over two decades, FSANZ has been able to charge the industry for amendments to the FSC which provide exclusive capturable commercial benefit. This is essentially allowing the use of a technology over which the applicant (company) has proprietary rights. Under these circumstances, the benefit flow to the community is restricted as not all of industry is able to take advantage of the amendment.

FSANZ has reviewed its charging framework and charges over a number of years. It has failed to provide a convincing case for imposing greater levies, or scope of levies over that time.

The AFGC notes, that when the ability to impose a fee for service, particularly to expedite applications more speedily through FSANZ was to engage additional resources to ensure other non-fee paying applications were not delayed through resource shortages. The AFGC has not audited FSANZ resources closely but it suspects that fee paying applications may on occasions delay non-fee pay applications due to resourcing issues.

It should be noted that there is a considerable cost to an applicant simply in preparing an application. Notwithstanding the prescriptive process applicants need to prepare extensive technical data and analysis to convince FSANZ that an amendment to the FSC is justified.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic

and social impacts).

Please provide your response in the box. :

As stated earlier (please refer to Q2) in this Submission, the AFGC does not support the objectives of the FSANZ to be broadened to include sustainability. The AFGC considers it beyond the remit of FSANZ.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

The AFGC strongly supports initiatives addressing sustainability issues at the company level, at the collective industry level, and in partnership with Government-led initiatives, including regulatory interventions. Furthermore, the AFGC recognises Australia's agri-food sector is well placed to leverage its "clean and green" reputation. It is the case, however, that the Government already has the policy and regulatory agencies and instruments to pursue sustainability objectives, and there would be no additional advantage in expanding FSANZ's work in this area.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

The AFGC is supportive of FSANZ's activities to better recognise and incorporate indigenous culture and food expertise within the current review. Please refer to this Submission's previous response in Q3.

The inclusion of more native foods and ingredients in the food supply could help to support availability and equity of indigenous food stuffs around the country. Incentives to include indigenous foods and culturally important ingredients in the Australian food supply through regulatory recognition may go further to increase native foods/ingredients in the food supply. This could facilitate innovation in the commercialisation of native ingredients with new food manufacturing.

The AFGC notes that the New Zealand Government has a constitutional obligation in relation to Maori under the Treaty of Waitangi. In relation to Australia, changes would be required to the FSANZ Act to enable recognition of Australian indigenous people. The AFGC does not have the expertise to advise on how this might be done. The AFGC would welcome the opportunity to contribute to further consultations on the issue.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

There may be significant opportunities for the Australian food industry to bring traditional foods to the broader market either as whole foods, or specialised ingredients and flavourings. The AFGC would support further exploration of these opportunities recognising the need for cultural sensitivity, respect for intellectual property, and fairness in business dealings.

The AFGC notes that traditional indigenous foods are already available in Australia. These include kangaroo, emu, crocodile, native fish, some insects, and some plants such a wattle seeds. There have been numerous commercial ventures over recent decades marketing 'bush tucker foods'. To the AFGC's knowledge these have not required special regulatory responses, but this does not mean that future food regulatory policy should not be more sensitive to the issue of indigenous rights.

A key issue with bringing traditional goods to market is the current food regulatory system defines many of these foods as novel foods and hence must meet requirements that often prevent progress through the system and economic opportunity.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC views this component as positive. Risk-based assessments coupled with proportionate regulatory responses are the sine qua non to best practice regulation.

BEST PRACTICE REGULATION

It is generally recognised that regulations impose costs not only on the industries being regulated (costs of compliance), but also on government (enforcement costs) and on consumers (impacts on price and product availability). The AFGC is a strong supporter of best practice regulation – that is regulation, which is cost-effective, evidence-based and proportionate to the risk. Best practice regulation is also an agreed requirement of governments in Australia – States, Territories and Commonwealth. Governments have agreed to follow the COAG Guidelines .

To regulate most equitably, the costs imposed must be outweighed by benefits accrued. Therefore, when developing food regulations, it is not only in the industry's interest but also in the interests of government, and ultimately the wider community to estimate and minimise costs. Imposing unnecessary costs is contrary to the government's objective of supporting a food industry which can contribute to economic activity and to the wealth of the nation.

Governments recognise the value of best practice regulations which, in brief, includes:
1. Problem identification – the issue being addressed by proposed regulation should be clearly identified regarding its nature, its magnitude and ramifications if not addressed;
2. Outcome sought – the anticipated outcome of imposing the regulation needs to be specified with a clear statement of who will benefit, and what the benefit will be;
3. Other options – alternative approaches to achieve the same outcome need to be canvassed with an assessment as to why regulation is the preferred option;
4. Impact assessment – before enacting regulations a thorough assessment of anticipated benefits and harms should be conducted. The assessment should be quantitative including monetary estimates, and regulation should only be adopted if the benefits clearly outweigh the costs;
5. Consultation – relevant stakeholders should be included in a formal, open, government-led consultation. Issues identified during the consultation should be addressed and, if necessary, the regulatory approach modified.

Such policy and regulatory frameworks provide governments with confidence that regulations are necessary and will be effective. They also provide industry and the public with a mechanism to hold government accountable for its policy and regulatory interventions. The net result will be best practice regulation with appropriate regulatory responses, where the most important issues with the most severe potential impacts will attract the most substantial regulatory intervention.

The AFGC does not wish to prosecute exhaustively the importance of the COAG guidelines, but there are instances of clear deviations from those guidelines in the way some aspects of the current ANZ food regulatory system operates.

RISK ASSESSMENT AND PROPORTIONATE RESPONSE OF REGULATION

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 .

The potential and appropriate roles of self- or co-regulatory measures in supporting values issues and public health issues should be considered as part of modernising the food regulatory system. Not only is it conceptually sound, but it also has other benefits such as distributing the cost of regulation away from government and onto industry. Of course, one of the concerns about self- and co-regulation is that there may be relatively low levels of compliance. Whilst compliance has to be absolute for food safety standards, there may be greater latitude in other areas where black letter law is applied. For example, very small packs of food with limited label space (less than 100cm2) are exempt from mandatory NIPs. This example recognises the reality that regulation does not need to apply to 100 percent of the market. Food regulation can be restricted in its reach based on a number of factors including company size, the potential monetary impact and capacity to comply.

SELF-SUBSTANTIATION, SELF-REGULATION AND CODES OF PRACTICE

Food regulatory agencies already place a great deal of trust in the food manufacturing industry when it comes to producing safe food which sits at the top of priority food regulatory issues . The fundamental requirement placed on the food industry is that food sold to consumers should be safe and suitable, but how that is achieved is essentially left to the food and beverage businesses. The law requires businesses to be able to demonstrate how food safety is assured through implementing an appropriate food safety plan, monitoring and recording aspects of its operations, and being assessed through periodic, independent audit. The frequency of audit may itself be subject to risk assessment.

Thus, in assuring safe food and beverage companies effectively self-substantiate that their food and beverage products are being produced safely. There is a high degree of trust that businesses will do the right thing and protect their consumers. This should give confidence to regulators and stakeholders in other areas such as nutrition and health claims, new technologies, novel foods and values issues that industry can also be responsible in self-substantiating.

To provide additional levels of confidence, however, formal oversight by regulators, and indeed other stakeholders, can be incorporated into self- or co-regulatory codes of practice resulting in outcomes which work for industry, serve consumers well and satisfy government that appropriate levels of protection are provided. A very successful example of how this works is the Allergen Collaboration and associated work of the Allergen Bureau (www.allergenbureau.net) which has established, and continually works to improve, an industry best practice approach to assist companies to reduce the risk to consumers with food allergies through allergen management and allergen labelling.

The ACCC also recognises the value of self-regulatory and co-regulatory alternatives to black letter law in the form of voluntary industry codes of practice. The benefits include:
1. more flexibility than government legislation. Codes can be amended more efficiently to keep abreast of changes in industry’s needs;
2. codes are less intrusive than government regulation;
3. industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply;
4. codes can act as a quality control within an industry;
5. complaint handling procedures under the code are generally more cost effective,
time efficient and user friendly in resolving complaints than government bodies.

The governance of codes of practice can, and indeed should, include government and other stakeholder representation especially on topics where FSANZ may not be a subject matter expert. Indeed, confidence in the governance of codes of practice, particularly with respect to the level of protection they provide, is critical to their acceptance as practical alternatives to black-letter law.

In reality, if the concepts of risk assessment and proportionate regulatory response are to be truly implemented, more prominence and opportunities for industry self-substantiation and formal codes of practice should be considered. The AFGC strongly supports both.

The AFGC’s views on the components of Option 2 are as follows:

1. Better use of FSANZ's other regulatory instruments (guides and codes) could increase the system's agility and responsivity to change.

Agreed. Guides and codes of practice are well excepted alternative regulatory measures to address low-risk problems consistent with the concept of proportionate regulatory responses.

2. Implementing a decision-making tool may lead to better uptake of the full suite of instruments available to FSANZ.

Agreed. A formal decision-making tool is likely to lead to more consistency in the regulatory response adopted, giving more certainty to industry of any outcomes to applications or proposals addressed by FSANZ.

3. Risk could drive processes in relation to applications and proposals.

Agreed. Lower risk issues should command less onerous requirements from the applicant and FSANZ alike.

4. Decision-making arrangements could allow for delegation by the FSANZ Board and Food Ministers' Meeting.

Agreed. The AFGC supports delegating decisions for low-risk, routine matters to FSANZ Board and staff (see below for more detail).

5. The Act could provide for FSANZ to accept risk assessments from overseas jurisdictions.

Agreed. FSANZ should be able to accept risk assessments from competent relevant overseas authorities, subject to an initial assessment to ascertain that this was appropriate.

6. The creation of new pathways could expedite low-risk amendments to food standards.

Agreed. This is similar to point 3, above. The new pathways would comprise different process and requirements for evidence-based on risk.

7. An additional pathway to bring very low-risk products (including additives and ingredients) to market could support greater economic opportunities for food businesses.

Agreed. The AFGC considers that applications for processing aids and foods derived from gene technology could be subject to little or no regulatory overview particularly if they had been approved by regulatory agencies overseas.

The AFCG supports component 2 as it helps the regulatory system keep pace with technological advances by providing regulators with guidance, new tools and other resources.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The AFGC supports in principle delegation of decision making to the FSANZ board for amendments which are considered to be low risk (as yet to be defined). Many applications to amend the FSC are straightforward and considered 'routine'. Notwithstanding this, their efficient processing is important to the individual food company making the application. Most often, such applications are seeking approval for a new processing aid, a new additive or on occasion a new food derived from gene technology.

In providing this support the AFGC also considers that safeguards are required which would include:
1. A service charter from the FMM delegating the decision-making powers on the basis that the powers:
a. were temporary to be renewed following periodic review (i.e. perhaps every three years)
b. could be withdrawn for specific applications or proposals by majority decision from the FMM
c. decisions could be overridden or reversed by the FMM by majority decision, under certain circumstance.

2. A robust and transparent framework within the FMM service charter that describes how FSANZ would determine whether it had the delegated power of decision-making in any particular instance. The framework might consider aspects such as existence of overseas regulatory approvals, similarities to previous approvals provided, intended use, and levels of exposure. Many processing aids, for example do not carry through to the final food, so are highly unlikely to represent a health risk.

3. Restrictions on any potential scope creep through provisions of the agreed FMM service charter with FSANZ.

4. Applicants to be provided the option to choose whether their application should be determined solely by FSANZ's processes, or whether to seek a decision from the FMM.

5. Provision for an appeal by applicants to allow the decision to be taken to the FMM.

The AFGC would only support the delegation of decision-making to FSANZ if other reforms of the system sought by the AFGC proceed, and specifically that support of an innovative, competitive food industry is included as a major objective in the reformed FSANZ Act. This would support a 'culture' within FSANZ more sympathetic to industry's views than perhaps currently exists. Also, the new arrangement may lead to addition resource requirements for FSANZ. FSANZ should receive additional funding for decision-making activities.

Recommendation 7 - The AFGC recommends that if the Food Minister's Meeting (FMM) delegate any decision making powers to Food Standards Australia New Zealand (FSANZ) those powers should be confined to low-risk, uncontroversial applications and proposals to amend to the ANZ Food Standards Code defined within a bespoke Service Charter between the FMM and FSANZ.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The AFGC considers Codes of Practice or Guidelines would be valuable.

To provide additional levels of confidence, however, formal oversight by regulators, and indeed other stakeholders, can be incorporated into self- or co-regulatory codes of practice resulting in outcomes which work for industry, serve consumers well and satisfy government that appropriate levels of protection are provided. A very successful example of how this works is the work of the Allergen Bureau (www.allergenbureau.net) which has established, and continually works to improve, an industry best practice approach to assist companies to reduce the risk to consumers with food allergies through allergen management and allergen labelling.

The governance of codes of practice can, and indeed should, include government and other stakeholder representation including industry when making changes which impact food. As stated previously the ACCC also recognises the value of self-regulatory and co-regulatory alternatives to black letter law in the form of voluntary industry codes of practice.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The AFGC does not possess any data as requested.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

The AFGC does not have the data required to estimate the potential savings as requested. There has been no need in the past for the industry to document the costs of individual aspects of bureaucratic processes of the food regulatory system, either at the individual company level, or collectively across the whole industry.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC considers the concept of building in flexibility through the creation of bespoke regulatory sand boxes as positive and wishes to understand in more detail the concept and tangible benefits.

Innovation is the cornerstone of the food processing industry's return to growth. Innovation in both product and production holds the key to:
1. raising business productivity and profitability. Profits allow reinvestment in the company to improve its products, including in the nutrition and health space;
2. improving competitiveness in both domestic and export markets;
3. opening new markets;
4. responding effectively to consumer trends.

The AFGC considers that regulatory sandboxes should not be at the expense of substantial reforms in other areas or be a proxy for not addressing issues within the application process itself. The opportunity to use a sandbox, therefore, should be an additional offering of the regulatory system. Furthermore, public safety should remain an imperative under this framework. Thus, some sort of risk assessment should precede operation of the sandbox.

The AFGC notes that The Ministry of Trade and Industry in Singapore has a 2020: Agri-tech Regulatory Sandbox in food technology to allow

"Government agencies to quickly review regulations for agri-tech companies and farms, to support industry growth, innovative business models, and farming technology".

Furthermore, the AFGC notes that the Australian Energy Market Commission (AEMC) has adopted this concept to make it easier for businesses to do test runs on innovative ways to deliver services to consumers, and has provided advice on rules to implement regulatory sandbox arrangements. The AEMC in late 2019 released a final report that set out a pathway to introduce regulatory sandbox arrangements and enable proof-of-concept trials in the national energy markets.

One of the key recommendations from this report is that for companies to access regulatory relief, proof-of-concept trials would need to be time-limited and meet appropriate eligibility criteria, and appropriate consumer safeguards must remain in place during the trial. It also notes that there is a need

“to balance the need for the framework to be transparent and easy to use for trial proponents while providing sufficient protection to consumers and other parties that may be impacted by trials.”

The AFGC notes reference in the draft RIS to Health Canada utilising regulatory sandboxes, specifically in the area of Artificial intelligence (AI) and that the

“the notion of “regulatory Legos” might offer the agency the required flexibility to meet the demands of emerging and yet-to-emerge technologies that are not adequately addressed by the existing regulation.”

The AFGC seeks to better understand the practical and tangible outcomes of such a concept and sees opportunity for low-risk activities. such as a trial of ‘extended labelling’ i.e. QR codes on food labels instead of full on pack information.

Recommendation 8 -The AFGC recommends that the concept of bespoke regulatory sandboxes be included in reforms of the food regulatory system, including in reforms of the FSANZ Act in a way which preserves high levels of public interest protection, whilst facilitating innovation in the food industry.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

The AFGC has not had time to consider in detail a response to this question but some ideas which have been suggested include:
1. trialling QR codes on similar on-label devices to allow consumers to access information which would normally appear on pack but is not critical to the safe consumption of the product. For example, the food additives used in the products;

2. commercial trials of a new product which has been successful overseas but may not have regulatory approval for some of minor components or technologies used in making the product (for example processing aids). In this case, the product would present no public health and safety risk. Compliance with all mandatory labelling requirements important for safety would still be required, but some labelling requirements might also be relaxed;

3. consumer acceptance trials a new ‘nature identical’ ingredient which might be developed using a different technology. For example, a protein which had been developed in a bio-fermenter which was the same as protein from a ‘natural’ source might be trialled with labelling clearly stating its source.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC considers the concept of FSANZ as a hub of food safety intelligence to drive future regulation as positive, and is supportive in principle, but wishes to understand the concept in more detail.

Currently one of FSANZ’s roles is horizon-scanning to detect and consider the implications of emerging food safety hazards. The AFGC supports the concept of a single agency leading this activity but in reality, it should be a very collaborative effort.

There are numerous agencies across the public sector in Australia which have expertise in food safety. They are in government bureaucracies, in universities and in the CSIRO. The AFGC considers that FSANZ could also leverage food safety expertise within industry where practical aspects of manufacturing safe food are well understood. FSANZ’s role could be formally described and, with appropriate resourcing, act as a lead agency gathering and collating information, preparing analysis and developing options for possible regulatory and non-regulatory responses.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

The AFGC considers that food safety data falls into separate, but linked, areas:

1. Public health incident data comprising the information about the people (number, gender, age co-morbidity, outcomes, etc.) who fell ill, and the identity of the causative agent of the foodborne disease. This would include serological data to inform the epidemiological analysis of the outbreak, and possible links to other outbreaks;

2. Root cause analysis determining the circumstances leading to the outbreak, including any breakdown or inadequacies in accepted food safety hazard reduction activities;

3. Food system surveillance through monitoring of the food supply for potential hazards. FSANZ already has access to the National Residue Survey . It may be appropriate to extend surveys to other potential hazards.
The AFGC strongly supports this type of data being collected and analysed. It can be invaluable in addressing food safety issues, thereby lowering the overall burden of food safety outbreaks on the community. It can assist continuous improvement across the food industry, again to reduce the incidents of food borne disease outbreaks. Importantly it can support the already strong reputation the Australian food industry has for safety in both the domestic and overseas markets.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC supports in principle the following elements (page 61) to support new approaches as follows (and reserves full support until more detail is provided).

FSANZ and the FMM could undertake periodic joint agenda-setting to agree on the proposals on which to focus. AFGC considers that criteria (see below) for setting and changing the FSANZ workplan program, in particular proposals, would be critical.

FSANZ could partner with government to make intelligence-led decisions and reduce duplication of effort through:
1. earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards;
2. collaborating with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response;
3. enhanced information sharing with agencies (including standard-setting bodies and other regulators).

The AFGC cautions that there will be resource demands for engagement with multiple overseas jurisdictions.

The AFGC suggests that FSANZ's databank could be available to research and academic institutions to drive high-quality research and policy work both across and outside government. This would have the benefit of:
• Informing project work carried out by FSANZ at the request of the jurisdictions;
• Providing data or data-linkage services to the general public.

The AFGC notes that consideration be given to security and the protection and privacy of commercial data.

The AFGC would support further functions of FSANZ which would contribute to a better public policy framework addressing nutrition and health. Any regulatory intervention, however, should be subject to rigorous assessment, based on strong evidence that a beneficial outcome will result, and be proportionate to the issue being addressed. Other additional functions may be in public health research, or consumer education. The AFGC notes, however, that other agencies exist at the Commonwealth level which can, and already do, carry out these functions such as conducting research. These include the Australian Institute of Health and Welfare (AIHW, www.aihw.gov.au), the National Health and Medical Research Council (NHMRC, www.nhmrc.gov.au) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO, www.csiro.au). The AFGC would not support duplicating the functions of these commonwealth organisation.

With regard to investigating food safety outbreaks, the AFGC notes that these outbreaks are currently investigated at the State or Territory jurisdictional level when they occur. Again, the AFGC does not support duplication of these functions. Nor does the AFGC consider there is a compelling case suggesting the current mechanisms for investigating food safety incidents are not working effectively.

The AFGC is also uncertain as to the nature of assistance FSANZ should be providing industry intending to make applications to amend the FSC. FSANZ already provides an Application Handbook to guide industry through the process of making applications. Moreover, FSANZ staff can, and do, contact the applicants providing feedback and assistance to assist the application process and progress, although on occasions there have been concerns regarding the time taken to provide feedback.

The AFGC recognises, however, that there is variability in the level of assistance FSANZ provides. There may be some benefit for applicants if the nature and extent of assistance could be standardised. This would help inform industry and manage their expectations, and it may allow FSANZ to better manage their expectations. The AFGC also suggests that a 'rapid response' be developed such that industry can access FSANZ feedback in a timely manner.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

The AFGC supports the principle of cost recovery on the proviso that it is justifiable, appropriate and proportionate. AFGC supports the findings of the 2001 Productivity Commission (PC) review of cost recovery by Commonwealth Government agencies, that well-designed cost recovery arrangements could promote economic efficiency and equity by instilling cost-consciousness among agencies and users.

Notwithstanding this, AFGC is concerned that cost-recovery approaches vary substantially within government from agency to agency. This variability suggests a lack of efficiency for government, and potentially excessive regulatory burden on industry.

AFGC supports the Australian Government Cost Recovery Guidelines to ensure that agencies engaged in cost recovery conduct these activities in an effective and open manner. AFGC supports a mandate that departments, agencies, statutory authorities and boards responsible for cost recovery processes must adhere to these Guidelines without exception or omission.

The essence of the AFGC position on cost recovery is that there must be an equitable apportioning of costs between beneficiaries of any regulation viz:
• industry to pay for exclusive capturable and commercial benefit provided by specific regulations;
• the community, through the regulatory agency, to pay when direct, or spill-over benefits accrue to the community resulting from specific regulations.

The AFGC specifically objects to industry funding in toto the costs of running an agency. Apart from clear inequity in these arrangements, it raises issues of vested interests and conflict between the agency and industry. In effect, 100% cost recovery creates a perverse incentive leading to inefficiency, cost-padding and slower approvals.

The AFGC recognises the reality of cost recovery for services provided by the public sector. The AFGC considers, however, that in the area of food safety there is a strong public good argument that data about food safety issues should be put into the public domain as rapidly as possible. The draft RIS does not propose a

mechanism for cost recovery which is equitable, and would be cost-effective and result in widespread dissemination of the information. If such data is only available on a cost-recovery basis it is likely that some companies would not pay, and those that do may see no benefit in sharing the information with potential competitors.

Recommendation 9 - The AFGC recommends that data and data-linkage services provided to industry by FSANZ, or any government agency, on food safety issues be considered a public good and thus not be subject to any cost recovery provision which would hinder the dissemination of critical food safety information.

The AFGC also points out that the quality of any data and data-linkage services will rely heavily on how complete, comprehensive and accurate the data is. Much of the data will rely on industry reporting food safety issues when they occur (even if no illnesses result). It seems unfair that industry would then be asked to pay for information from the databases which may assist their food safety systems improvement.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC supports streamlining FSANZ's governance and operations and moving to a smaller, skills-based Board as suggest in the draft RIS. This is consistent with modern management practices and is likely to result in a more efficient, cohesive Board.

To emphasise the importance of New Zealand in the FSANZ arrangements, consideration should be given to ensuring that an appropriate number of Board members are from New Zealand.

Elevating FSANZ to a more prominent role

Food is regulated in three major areas:
1. Food labelling – prohibitions, restrictions, permissions and requirements for information which needs to be on food labels to provide for informed choice by consumers;

2. Food composition – restrictions and permissions as to the presence, or absence of levels of potential hazards which may be found in foods, or substances which may be intentionally added to food, or maybe a consequence of process used in food manufacture or handling;

3. Food safety standards – placing obligations on food businesses to ensure the way they produce, handle and prepare foods for sale results in food products that are safe and suitable for consumers.

Food labelling and food compositional standards (Chapters 1 and 2 of the FSC) are essentially national standards. Many products for sale through retail outlets in Australia are available across the nation. Smaller manufacturers may have local distribution, but their products are similar to products available elsewhere.

Food composition and labelling standards, in terms of protecting public health and safety tend to be less critical. That is, risk analysis regarding the origin of food borne hazards demonstrates that with a modern, technologically advanced food manufacturing sector most risk is derived from poor adherence to food manufacturing and handling standards, rather than poor compliance to food compositional or labelling standards. This has resulted (sensibly) in most jurisdictions devoting considerable enforcement resources to food safety standards, and far fewer to enforcing food labelling or compositional standards.

Establishing compliance with standards is relatively simple. Products can easily be obtained from retail outlets, and their compliance with labelling and compositional standards assessed by visual inspection and sample analysis. This function can be readily carried out by a central regulatory agency. The agency can also assess the implications of any non-compliance and determine appropriate enforcement action. Against this backdrop, AFGC considers there is a strong case for food standard development in Chapters 1 and 2 and their enforcement to be centralized through a single national agency- most logically through FSANZ.

To be clear proposals and applications to amend the FSC would remain essentially the same with all stakeholders able to make submissions to the formal FSANZ's public consultation processes. States and Territories would still be able to express their views along with other stakeholders. The AFGC is simply proposing that the enforcement of Chapter 1 - Introduction and standards that apply to all foods and Chapter 2 - Food Standards should be centralised in an expanded FSANZ.

The AFGC considers, however, that States and Territories should retain enforcement responsibility for Chapter 3 Food Safety Standards. Enforcement of food production and processing standards requires local inspection and audit of production systems and premises, and systematic sampling and testing of products for sale. Government has a role, particularly in production and systems surveillance and monitoring. This requires local offices and officers with local knowledge of the agricultural and food industries. Consequently, for optimal effectiveness, this area of standards enforcement is best carried out locally through direct interaction with businesses at site or premises level.

To effect these changes States and Territories would cede food regulatory power to the Commonwealth (and hence to FSANZ) for the development of food composition and food labelling standards, whilst retaining power to enforce food processing and handling standards developed under a national framework. The role of FSANZ would expand to allow it to develop, gazette and enforce food composition and labelling standards. This would have the additional benefit on allowing FSANZ to provide a central interpretive advice service for Chapters 1 and 2, which historically has been where most demand for advice resides. This would free-up resources of the States and Territories allowing them to concentrate on the enforcement of food safety standards.

There is, of course, already a precedent for central regulatory agencies setting and enforcing standards and regulations. In Australia it occurs with the TGA and the ACCC. And indeed, FSANZ already has responsibility for enforcement of the FSC for imported goods. Admittedly this work is 'subcontracted' to Biosecurity Australia, but FSANZ establishes the risk classification of food and beverage products. Also, in effect, labelling and compositional standards are enforced by Biosecurity.

As stated previously in this Submission the AFGC does not consider FSANZ should have and enforcement role in New Zealand. If, however, FSANZ took over this role in Australia, it would be expected that it would liaise with the MPI in New Zealand to align enforcement priorities and approaches for labelling and compositional standards.
The AFGC recognises that in New Zealand enforcement is carried out by the MPI (MPI). The AFGC considers enforcement of compositional and labelling standards in New Zealand should remain with MPI. It should be noted, however, that a large proportion of food products are imported from Australia by New Zealand. In effect, therefore FSANZ would become a de facto enforcement agency for many products sold in New Zealand.

Recommendation 10 - The AFGC recommends that the FSANZ Act be amended to provide for Food Standards Australia New Zealand in Australia only to take over enforcement of food labelling and composition standards (essentially Chapter 1 and Chapter 2) of the ANZ Food Standards Code with enforcement of Chapter 3 – Food Safety Standards to remain the responsibility of the individual State and Territory jurisdictions.

Amend the FSANZ ACT to reflect a broader range of functions that FSANZ could deliver now and in the future

The AFGC is wary of extending FSANZ's functions too far. Apart from the extra resources FSANZ would require carrying out those functions, they may distract FSANZ from their core role of being the leading food regulatory agency across Australia and New Zealand.

The AFGC does not support FSANZ expanding its responsibilities to food fraud and food crime. These are criminal matters already covered by other legislation and enforcement agencies including the police. FSANZ has no current skills in crime investigation and enforcement. FSANZ could, however, provide technical advice into the potential food safety implications of food fraud on a case by case basis.

The AFGC would support FSANZ playing a greater role in increasing public awareness of food safety issues, as well as the role of food labelling and food regulation. Again, this should be subject to resources being made available.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The AFGC considers there are few risks to stakeholders with the proposed changes as proposed in Option 2. However, the AFGC is conscious that with any legislated changes, there may be risk of unexpected consequences. Ideally, with the objectives of the FSANZ and its role in the food regulatory system clarified in an updated FSANZ Act there would be a high degree of congruency in the views of the Board. Supported by a well-resourced, competent staff the AFGC anticipates that, in line with the primary objectives of new FSANZ Act the Board would steer food regulation development to outcomes which met the needs of a competitive food industry and the consumers its serves.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The AFGC agrees with the assessment of costs and benefits of Option 2 presented in the draft RIS and is generally supportive of this component.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The AFGC does not have the data required to estimate the magnitude of these costs and benefits.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The AFGC supports a well-funded, scientifically well-resourced food regulatory system with FSANZ at its apex. The resourcing of FSANZ has been an almost perennial issue with funding being a more acute issue in recent years. The issue of cost-recovery from industry has also been visited on an intermittent basis since the late 1990s when FSANZ (as the then Australia New Zealand Food Authority) was allowed to charge companies for the resource needed to either expedite rapidly (i.e. jump the queue) an application to amend the FSC, or if the company was able to extract an exclusive capturable commercial benefit (ECCB) from the amended FSC.

Many applications do not result in an exclusive benefit to a food business. Rather they remove a prohibition on the use of a technology which many food businesses may subsequently use. Furthermore, as applications are often aimed at creating better products or better processes, there are wider community benefits either directly or indirectly. Applications may also allow a pathway to create more diverse or internationally accepted or harmonised products or processes. Applications are often used as a way to harmonise with international markets due to differences between countries and markets. Attributing the value to benefits is complex thus attributing a fair cost for FSANZ work function to any party is problematic. It is generally accepted that with a broad public good resulting from FSANZ and the food regulatory system the public should pay for it.

The AFGC is aware, however, that a substantial proportion of FSANZ work is thrust upon it by the jurisdictions through the FMM and FRSC. The AFGC is also aware that FSANZ provides services and functions to other parts of Government such as development of the Health Star Rating front-of-pack nutrition labelling system prior to its introduction. This would have commanded considerable resources within FSANZ. The AFGC understands these costs were not reimbursed from the Department of Health and Ageing.

The AFGC considers that if jurisdictions, or other parts of Government want FSANZ to undertake work which FSANZ does not consider key to fulfilling its objectives, then funds should accompany the requests.

Recommendation 11 - The AFGC recommends that if FSANZ is requested to do additional work by the Food Minister's Meeting, by jurisdictions or by other Commonwealth Government departments additional funds should be found to cover the resource cost borne by FSANZ.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

n/a

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

The AFGC itself rarely engages through making applications to change the food standards.

The AFGC in 2012 sought to amend the conditions prescribed in clause 16 of Standard 1.2.8 - Nutrition Information Requirements for claims related to the gluten content of food. Specifically, AFGC seeks to amend the current 'no detectable gluten' condition prescribed in paragraph 16(2)(a) for making a gluten free claim to a level of 20 mg/kg of gluten or less. Also, to amend the maximum level of gluten permitted in subclause 16(3) for making a low gluten claim from 200 mg/kg to 100 mg/kg.

Due to various reasons, the application was withdrawn. The proposed amendment would have brought Australia and New Zealand into line with the Codex Standard and the standards in force in Europe, and many parts of Asia. Furthermore, the US FDA is currently considering amending their food standards to reflect Codex Standard 118-1979.

This alignment would have created more efficient international trade opportunities for Australian manufacturing companies, which will be able to manufacture products for the same standard in a great number of jurisdictions. It would have also removed some barriers to trade by enabling increased opportunities for imported gluten free products, and thereby creating more competition within the Australian market. Note that if the importing country does not accept a label format, then a unique label is still required. Trade agreements (in conjunction with harmonisation) would remove the regulatory burden of the requirement for unique packaging.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The AFGC is an industry association with competencies which cover well the scope of activities undertaken by FSANZ. There is a respectful relationship between FSANZ staff and the AFGC Secretariat staff reflecting that common approach to regulatory issues based on a sound technical evidence base and best practice regulation principles. This respectful relationship also extends to scientific and regulatory affairs experts working in AFGC member companies.

From time to time, FSANZ seeks the direct assistance from the AFGC to better understand industry practices to help inform their standards development work, and its implications. And conversely, the AFGC also seeks clarity on some aspects of FSANZ's work to better understand the issues they are addressing. Thus, there are no significant barriers inhibiting engaging with FSANZ.

Engaging effectively with the food regulatory system outside FSANZ is more problematic. Each jurisdiction is unique in many aspects of how food regulations are managed. Moreover, there are often different views held by the states and territories on individual issues making it difficult to engage efficiently.

The operations of the FRSC and the Implementation Sub-committee for Food Regulation (ISFR) are more difficult to engage. Their work is somewhat opaque, although there has been more clarity in recent years with the posting of workplans on websites. That said, there are no formal mechanisms for stakeholders to raise specific issues with either committee or to influence the prioritisation of their work.

Pre-COVID-19, FRSC did hold periodic Stakeholder Roundtables which were an attempt to engage with the wider stakeholder community. The AFGC was able to present at the Roundtables, although to date there has been little evidence that those presentations influenced the thinking of FRSC to any great extent.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

The AFGC supports the concept of multiple pathways being available to industry to seek amendments to the FSC. These would range from full assessments by FSANZ through to industry self-substantiation with minimal or no checks. For example, a pre-market clearance may be one pathway to prevent this process from following the same pathway (and issues we are seeing now) with self-substantiated 'notified claim' process under Standard 1.2.7. Nutrition, health and related claims

Reframe legislation to support more agile, risk-based processes

The current prescribed processes provide little opportunity for FSANZ to exercise judgement in what must be done to meet the primary objectives of the FSANZ Act. They are able to determine if an application is complex or simple and this allows some modification in process. FSANZ is unable, however, to decide that if an application is very straight forward, or is essentially the same as a previous application (for example, as would be the case if two applications were made, one after another seeking approval for very similar processing aids).

Currently, 87 approvals have been sought for foods produced using gene technology under Standard 1.5.2 Foods derived from gene technology since its gazettal more than 20 years ago. In that time there have been no rejections and no proven public health concerns raised. FSANZ is, however, locked into the prescribed process with little flexibility to examine the applications in the light of what has gone before and fast-track the approval process.

Interestingly, FSANZ separates its approval processes into Risk Assessment and Risk Management. There is little evidence, however, that the outcomes result in a proportionate regulatory response, which is ultimately the purpose of the processes.

The AFGC supports a framework for varying processes of application assessment based on a risk assessment framework and subsequent varying regulatory responses including industry codes of practice. This idea has been proposed previously following a formal review (Blewett Review) of food labelling which was carried out in 2011.

Create industry-led pathways to expedite applications and bring new products to market

The AFGC supports the concept of industry-led pathways to expedite applications and bring new products to market. FSANZ has proposed the concept in recent targeted consultations for reviewing P1024 Revision of the Regulation of Nutritive Substances & Novel Foods. Those pathways may well include industry self-substantiation of technical aspects of the application, which might include reference to overseas approvals, and substantial history of safe use in comparable markets.

The AFGC understands the State and Territory jurisdictions are uneasy with the concept of allowing industry to market novel foods without some form of assessed pre-market approval.

The AFGC supports a framework like self-determined GRAS (Generally Recognised As Safe) for lower risk products that do not require public notification. This would create a streamlined pathway where there is an existing safety assessment from a comparable jurisdiction. Ingredients which have been subject to pre-market assessment in a comparable jurisdiction or extension of use is sought may be criteria for industry self-assessment. Consideration will need to be given to a situation if a comparable jurisdiction decides there is evidence to revoke a safety assessment, and what mechanism would come into play in order to alert authorities in our market.

Other potential solutions relating to additional pathways to develop or vary food regulatory measures

The AFGC considers that there are essentially three primary ways to develop food regulatory measures:
1. by FSANZ with full pre-market assessment and approval. Accepting risk assessments and approvals made by overseas relevant competent authorities would be included;
2. by industry, with a notification, and option for post-market assessment of some type to appropriate compliance;
3. by industry under an industry code of practice. The industry code could be referenced by FSANZ in which case it would be ‘prescribed’ code.

These models are essentially regulation, co-regulation and self-regulation.

The AFGC considers, however, that more predictability of process is also important to food companies. Thus, if information requirements, application timelines, and final outcomes were more predictable food companies would have greater confidence in putting products into the FSANZ assessment system. Predictability would improve if FSANZ’s risk assessment and risk management functions were able to look at approvals in overseas jurisdictions, and were strongly committed to the principle of proportionate regulatory responses.

Other potential solutions relating to streamlining regulatory processes

The AFGC considers that once an appropriate risk assessment on proportionate regulatory response framework is introduced, there should be greater use of self-substantiation for approvals, codes of practice and guidelines should streamline regulatory processes.

Clearly accepting some scientific assessments from overseas jurisdictions is also a way to reduce substantially the burden of FSANZ’s regulatory processes. For example, toxicity assessments are conducted in a very established, standardised manner. FSANZ’s risk assessment processes would benefit if they were able to leverage toxicity assessments from overseas.

FSANZ may also, on occasions, be able to leverage risk assessments on substances which have been conducted by the TGA when they may have benefits for consumers when included in either foods or medicines.

The AFGC also considers that if FSANZ became the sole agency responsible for the development and enforcement of food labelling and food compositional standard, a substantial dividend in regulatory efficiency would result.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The AFGC is not supportive of change to the current system.

Food recalls are initiated when an outbreak of an illness is linked to a food product, or alternatively when a food company becomes aware that an error has been made in the production of a food product which may result in it being unsafe for consumers.

Under both scenarios, local authorities are health agencies are likely to become aware of the problem first, and under the current system they would notify FSANZ to help initiate a recall. The AFCG is uncertain how arrangements can be changed which would result in FSANZ initiating a recall.

The AFGC is not aware of any shortcomings of the current system which indicates major shortcomings exist.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The AFGC is unaware of any food businesses which have quantified these costs.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

In Australia, some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions are less favourable to industry in trying to protect consumers. This level of inconsistency is a continuing frustration for industry and a single overarching coordinator could address this situation.

Thus FSANZ playing a greater role may be positive for Australia but less so for New Zealand as they have a single enforcement agency that functions well.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The AFGC supports in principle to provide FSANZ to give greater guidance on food standards.

Elements of component 2 which AFGC supports are:
1. including a statement of intent alongside food standards in the Food Standards Code;
2. resourcing FSANZ to update and maintain industry guidelines;
3. resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims. FSANZ should replicate the work MPI does to support industry in preparing and submitting self-substantiated Health Claims s this would be of benefit in improving the quality of self-notified claims;
4. providing for a determination of what is not a food;
5. providing for a broader basis for interpretation of what constitutes a therapeutic good.

Notwithstanding this, the AFGC considers that any guidance FSANZ provides may be at odds with the views of one or more of the jurisdictions enforcement activities.

The AFGC has proposed that FSANZ take responsibility for the setting of standards and their enforcement in the areas of food composition and food labelling (Chapters 1 and 2 of the FSC, but not food safety and processing (specifically chapter 3). If this proposal were implemented FSANZ would be in a better position to provide advice on the requirements at least these parts of the FSC. This advice should be available in the public domain so that the broader industry might benefit. This advice might also be used to trigger FSANZ to update/review the Code.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The AFGC is aware of difficulties with self-substantiated health claims that are made in both Australia and New Zealand markets due to the different manner in which this process is managed in the two countries.

In addition, Australian jurisdictions do not seem to be resourced adequately to review dossiers and provide advice in this area. MPI, on the other hand, has the technical skills at least to review dossiers (but are possibly still under-resourced to handle matters quickly enough for industry needs) but has its own process for determining whether dossiers and associated claims are acceptable.

Differences in resourcing and process make it difficult to use the same claim in both markets which increases the burden on industry because changes to a dossier or changes to advertising may be needed in one market in contrast to the other.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

The enforcement of the FSC is carried out very effectively in New Zealand by the MPI. Therefore, the AFGC sees no benefit in setting up FSANZ as an enforcement agency in New Zealand. In contrast, if FSANZ to the responsibility for enforcement in Australia for food labelling and food composition standards, a substantial reduction in regulatory uncertainty would result.

The AFGC contends that very effective implementation of the food regulatory system in New Zealand suggest there might be improvements in Australia if FSANZ was not only given responsibility for enforcement for some aspects of the FSC, but also portfolio responsibility for FSANZ could move from the Department of Health and Ageing to the Department of Agriculture Water and the Environment.

Recommendation 12 - The AFGC recommends that the Administrative Orders be amended to move responsibility for FSANZ from the Department of Health to the Department of Agriculture Water and the Environment.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

As stated earlier in this submission, the AFGC considers FSANZ taking on an enforcement role in the enforcement of Chapters 1 and 2 of the FSC would be very positive for the industry, and indeed other sectors. This should, however, only apply to Australia, and not in New Zealand. This would enhance FSANZ's role in providing guidance about food standards. Simply put, if FSANZ was to be the sole enforcement agency in Australia for Chapters 1 and 2 there is no reason why it could not provide comprehensive interpretive advice.

The lack of interpretive advice regarding the intent of the FSC by FSANZ has been a hoary issue for many years. The constraint on FSANZ is derived from the legislative framework and the enforcement roles of the States and Territories. FSANZ did establish a service around 10 years ago to provide interpretive advice, but their internal processes which included consulting the States and Territories were so slow that industry found it of little use. The service was therefore discontinued.

The reality is that under the current arrangements the States and Territories cannot give up their ultimate legislated responsibility of enforcing their own regulations, and so determining what constitutes compliance and what does not.

Without a complete redesign of the system and its legislative arrangements, the AFGC considers it unlikely that the issue of inconsistency in implementation and enforcement of standards will be successfully addressed. Giving FSANZ a greater role in standard-setting and enforcement would go a long way to increasing consistency of enforcement of standards.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

The AFGC does not possess any details of costs in this area.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The AFGC does not support FSANZ speaking on behalf of both Australia and New Zealand to the international community. This would represent a negative outcome for both countries. The AFGC sees real advantages in having two strong coordinated voices in the many trade and regulatory negotiations which take place. It is true that Australia and New Zealand may not be precisely aligned in all instances but two voices 90 per cent in agreement are likely to be more influential that a single voice.

An area which benefits considerably from having two voices on the international stage is the development and adoption of international standards. The AFGC agrees that FSANZ should be able to choose to adopt international standards such as those in the Codex Alimentarius, and this should follow a streamlined consultative process. FSANZ should be required to justify why it does not accept those standards, which should be based on sound technical reasons.

Adoption of such standards should not be automatic and consultation with industry and other stakeholders should still occur. This helps ensure standards are fit for purpose within the Australian and New Zealand context.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The AFGC does not support Option 3 in its entirety but has support for some components. The benefits and cost are discussed specifically with regards to those issues.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

The AFGC considers that none of the functions in Option 3 lend themselves well to cost recovery. They all have a very strong element of public good and negligible opportunity to capture an exclusive commercial benefit.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The AFGC is disappointed that the reform options presented in the draft RIS do not align with the draft Aspiration for the Food Regulatory System.

Whereas the draft RIS recognises the importance of a regulatory system which supports a competitive and innovative food industry, the draft Aspirations barely mention the food industry. It is both indicative, and an insight into, the mindset of the bureaucracies responsible for administering the food regulations across Australia. The document seems to suggest that the Food Regulatory System is a thing of worth in its own right, rather than being a policy tool of government designed to guide, and work in partnership with industry to ensure consumers have a wide range of food products which are safe, nutritious, affordable, accessible, and culturally diverse from which to construct healthy diets.

The AFGC considers that aspirations for the food regulatory system should be focused on creating a food regulatory environment, conducive to the growth and profitability of the sector through a combination of appropriate prioritisation of objectives of the food regulatory system, reiterating some key operating principles around graded evidence and proportionate responses, highlighting the opportunities new smart device technologies offer for information gathering and dissemination, and proposing regulatory mechanisms facilitating export.

The AFGC considers that aspirations for the food regulation system and reforms which may flow from them must be tempered by practicalities. Specifically, food regulation cannot be the universal panacea to all of the pressing societal problems which may be associated to a lesser or greater extent to the food system such as sustainability, animal welfare and even non-communicable diseases.

The AFGC considers the food regulatory system should focus primarily on food as consumed product and its direct impact on the nutrition, physiology and health of individuals when consumed. Other regulatory frameworks or policy instruments are better placed to address other issues of community concern. Governments and other stakeholders must recognise the value of specialist regulatory agencies limited in scope but highly effective in delivering regulatory objectives efficiently and appropriately.

The AFGC developed aspirations for the food industry in response to a previous Government initiative to develop a National Food Plan. The AFGC presented a ‘vision’ for the food and grocery manufacturing sector which is reproduced below (Figure 2) . Food regulation is viewed as integral to the success of the sector reflecting the alignment, at least as industry views it, of industry’s aspiration for the food sector with that of Government.

Recommendation 13 - The AFGC recommends that the draft Aspirations for the Food Regulatory Systems document be amended to reflect that the Food Regulatory System should be supportive of a vibrant, innovative, profitable domestic food manufacturing industries in Australia and New Zealand.

48 Which components of each reform option do you consider to be your sector’s highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

n/a

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

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AUSTRALIAN FOOD & GROCERY COUNCIL

AFGC SUBMISSION

RESPONSE TO: PUBLIC CONSULTATION – REVIEW OF THE FOOD STANDARDS AUSTRALIA NEW ZEALAND ACT 1991 – DRAFT REGULATORY IMPACT STATEMENT

18 May 2021

Sustaining Australia

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

There are over 180 member companies, subsidiaries and associates who together comprise 80 per cent of the gross dollar value of the processed food, beverage and grocery products industries.

With an annual turnover in the 2018-19 financial year of $127.1 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 15,861 businesses and accounts for over $75.1 billion of the nation's international trade. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry made $2.8 billion in capital investment in 2018-19.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing 31.4 per cent of total manufacturing turnover in Australia.

The food and grocery manufacturing sector employs more than 274,800 Australians, representing 32.2 per cent of total manufacturing employment in Australia.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of the total persons employed 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 is recognised and factored into the Government's economic, industrial and trade policies.

In Australia, the food and beverage (grocery was not included in the Government's strategy but is recognised as a vital industry) manufacturing sector has been confirmed as an essential service and a National Strategic Priority. The Australian Government through its recently announced Manufacturing Strategy has challenged the sector to develop an industry roadmap describing how it will contribute to the post-COVID-19 recovery through expanding manufacturing, growing jobs, boosting exports and enhancing sovereign capability across the sector.

Food and beverage manufacturing plays an integral role in Australia's economic and social fabric. It is the lifeblood of many regional and rural communities. As such it is well placed to do the heavy lifting in the Manufacturing Strategy through its size, its know-how in adding value to the commodities of the agricultural sector, and to leverage the reputation for safety and quality among consumers in overseas markets.

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 - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement* ('the draft RIS').

The current review of the FSANZ Act sits within a wider review of the Food Regulatory System, which is a subset of the Australian Government's economy wide de-regulation policy agenda. And de-regulation has received greater impetus, and indeed greater importance, as a result of the COVID-19 pandemic. The COVID-19 crisis has left the economies of both Australia and New Zealand battered and both countries are looking to the food manufacturing sector to spearhead economic recovery. The draft RIS reflects the new imperative through firstly identifying three Policy Problems, and secondly proposing reform options designed to modernise the regulatory system with new objectives more supportive of an innovative, competitive, market-focused food industry, whilst protection of consumers remains paramount. The AFGC applauds this approach.

Option 1 of the proposed options in the draft RIS, namely *status quo* is clearly out of the question and if pursued would represent not only a wasted opportunity, but also a grossly negligent abrogation of duty by the government at all levels. The AFGC supports elements, but not all of **Options 2 and 3**.

FSANZ Act Objectives. The AFGC supports clarification of the FSANZ Act objectives to reflect:

- the importance of the food regulatory system supporting trade and an innovative, competitive food industry;
- protection of public health and safety as the paramount objective of the food regulatory system;
- accompanying provisions within the Act which references best practice regulatory principles such as evidence-based proportionate regulatory measures.

Public safety vs Public health. The AFGC supports the food regulatory system addressing public health issues. The *Nutrition Information Panel*, *Standard 1.2.7 Nutrition, Health and Related claims* and indeed the *Health Star Rating* are all examples of regulatory measures to assist Australians construct healthy diets. The AFGC considers, therefore, that more explicit clarification in the FSANZ Act is **unnecessary** for further standards assisting consumers to develop healthy eating.

Sustainability, Ethics. The AFGC does **not** support extending the scope of the food regulatory system to include sustainability or ethical issues. The AFGC considers the food regulatory system should be restricted to regulating food as consumed product considering only its impact on physiological, nutrition and health outcomes. The food industry is already regulated heavily in environmental issues (e.g. restrictions on solid waste disposal to landfill, or liquid waste to waterways) by Commonwealth and State and Territory agencies. The food industry is also subject to 'ethical' regulations under the ACCC (i.e. credence claims such as 'free range') and Modern Slavery legislation. FSANZ has no role, and certainly no competencies in this area, and any extension would double up on the responsibilities of other agencies.

Indigenous foods. The AFGC has no formal position on how the FSANZ Act might be amended to incorporate consideration of indigenous foods during development of food standards. The AFGC would welcome the opportunity to be part of discussions of this important issue.

Expanding FSANZ's role. The AFGC supports expanding FSANZ's role to taking responsibility for interpreting and enforcing food composition and food labelling standards (essentially Chapters 1 and 2 of the Food Standards Code). This would involve a small increase in FSANZ staffing, but it would allow FSANZ to provide interpretive advice and remove inconsistency of enforcement between jurisdictions.

States and Territories would retain responsibility for *Chapter 3 – Food Safety Standards* enforcement which requires 'on the ground' staff inspecting food premises. It also allows States and Territories to devote resources to the critical regulatory area of food safety (currently Priority 1 of the food regulatory system). This arrangement should be restricted to Australia only with the Ministry of Primary Industry (MPI) retaining full enforcement responsibility for enforcement in New Zealand.

Delegation of decision making to FSANZ. The AFGC **supports *in principle*** delegation of decision making by the Food Minister's Meeting (FMM) to the FSANZ Board for amendments which are considered to be low risk (to be defined). This support is conditional on other reforms of the system sought by the AFGC proceeding, and specifically that support of trade and an innovative, competitive food industry is included as a major objective in the reformed FSANZ Act. The AFGC support is also conditional on safeguards which would include:

- a service charter from the FMM delegating the decision-making powers on the basis that the powers could be withdrawn under certain circumstances;
- a robust and transparent framework within the FMM service charter describing how FSANZ would determine whether it had the delegated power of decision-making in any particular instance;
- restrictions on any potential scope creep through provisions of the FMM service charter with FSANZ;
- applicants to be provided the option to choose whether their application should be determined ultimately by FSANZ's processes, or the FMM;
- an appeal for applicants to allow any FSANZ made decision to be taken to the FMM.

International roles. The AFGC does **not** support FSANZ becoming the sole representative of Australia and New Zealand internationally. The AFGC considers Australia and New Zealand should retain independent voices in international fora. Two voices 90% in agreement are better than a single voice.

RIS vs Aspiration for the Food Regulatory System. The AFGC is **disappointed** that the reform options presented in the draft RIS do **not** align with the draft Aspiration for the Food Regulatory System. Whereas the draft RIS recognises the importance of a regulatory system which supports a competitive and innovative food industry, the draft Aspirations barely mention the food industry. It should be supportive of a vibrant, innovative, profitable domestic food manufacturing industries in Australia and New Zealand.

RECOMMENDATIONS

The AFGC recommends that (not in priority order)

1. the draft RIS include a further Policy Problem *"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."*

2. a regulatory approval pathway for high level health claims continues to be provided for in the FSANZ Act.

3. the FSANZ Act be amended to require the monetary cost of Food Minister's Meeting (FMM) requested reviews of FSANZ's recommendations regarding amendment of the Food Standards Code be met by jurisdictions supporting the review request.

4. the FSANZ Act be amended to restrict FSANZ's regulatory scope to dealings with food as a consumed product encompassing and limited to the food safety aspects of food processing and handling, and to food compositional requirements and food labelling requirements.

5. the FSANZ Act not be amended to expand FSANZ's responsibility to issues related to sustainability.

6. the review and reform of the FSANZ Act continue, recognising that other food regulatory system review and reform activities currently underway will be critically dependent on an updated FSANZ Act.

7. if the FMM delegate any decision making powers to FSANZ those powers should be confined to low-risk, uncontroversial applications and proposals to amend the ANZ Food Standards Code be defined within a bespoke Service Charter between the FMM and FSANZ.

8. the concept of bespoke regulatory sandboxes be included in reforms of the food regulatory system, including in reforms of the FSANZ Act in a way which preserves high levels of public interest protection, whilst facilitating innovation in the food industry.

9. data and data-linkage services provided to industry by FSANZ, or any government agency, on food safety issues be considered a public good and thus not be subject to any cost recovery provision which would hinder the dissemination of critical food safety information.

10. the FSANZ Act be amended to provide for FSANZ in Australia only to take over enforcement of food labelling and composition standards (essentially Chapter 1 and Chapter 2) of the ANZ Food Standards Code with enforcement of Chapter 3 – Food Safety Standards to remain the responsibility of the individual State and Territory jurisdictions.

11. if FSANZ is requested to do additional work by the FMM, by jurisdictions or by other Commonwealth Government departments, additional funds should be found to cover the resource cost borne by FSANZ.

12. the Administrative Orders be amended to move responsibility for FSANZ from the Department of Health to the Department of Agriculture Water and the Environment.

13. the draft Aspirations for the Food Regulatory Systems document be amended to reflect that the Food Regulatory System should be supportive of vibrant, innovative, profitable domestic food manufacturing industries in Australia and New Zealand.

INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to respond to the *Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement* ('the draft RIS').

As with earlier submissions to the consultations on the review of the Food Standards Australian New Zealand (FSANZ) Act and other aspects of the food regulatory system, this submission represents the collective view of the AFGC membership. AFGC member companies will be making their own submissions to the current consultation. Their views may differ in some detail to the AFGC's views, but the AFGC is confident that all will reflect a common view that the food regulatory system is in need of a substantial overhaul to modernise it and 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 two parts:

1. General comments about the draft RIS and the approach it takes in describing the current bi-national food regulatory system (its short comings and successes), and the opportunities for improvement. The AFGC also makes some specific comments regarding some points made in the draft RIS which have raised come concerns, and
2. Responses to questions posed in the draft RIS.

GENERAL COMMENTS.

The AFGC considers that the draft RIS has comprehensively described the current Australia New Zealand (ANZ) food regulatory system. In doing so it has identified that, by and large, the system provides for what must be the core objective of any modern national food control system – namely supporting the food security[1] of the nation and its consumers.

The draft RIS has also accurately identified many of the great changes in both the food industry, and consumers' expectations of the food industry since the current regulatory system commenced some 30 years ago. As a consequence, the draft RIS concludes through the identification of three primary Policy Problems, that modernising the food regulatory system is now an imperative.

The Policy Problems alone are sufficient justification for substantial reform. The draft RIS, however, also identifies the role assigned to the food industry as a core driver of the post-COVID-19 economic recovery in Australia and New Zealand by their Governments. A modern food regulatory system, sensitive to the needs of industry, and operating with an agreed objective of facilitating growth and profitability of the industry will be indispensable in both countries to that role being fulfilled.

[1] Food Security as defined by the Food and Agricultural Organisation – "...all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life". Chapter 2. Food security: concepts and measurement [21] (fao.org)

The industry's competitiveness in global markets, of which the domestic Australian and New Zealand markets are but sub-sets, is the aggregate of the competitiveness of individual companies, large and small. Those companies compete primarily on price, quality (e.g. taste), convenience, brand values and health and wellness. The food regulatory system only regulates the latter – health and wellness. Food companies compete in health and wellness through two mechanisms only – product attributes and product claims (i.e., label statements). The two mechanisms are clearly linked.

Companies introducing a new technology (such as a novel food ingredient) generally will do so only if they can tell consumers about the new benefit it brings – i.e. through the nutrition and health label claims. Both novel technologies and the stronger (high level) health claims are subject to pre-market approvals. In both areas the food regulatory system and FSANZ processes are highly precautionary and dis-proportionate with respect to the level of risk to public health and safety.

This Policy Problem can directly prevent innovation and development, which can delay Australian manufacturing performance globally and have significant economic consequence. This anomaly needs to be addressed within the Act, so that innovation through improvements in ingredients and processes, through proper industry diligence, as discussed, is facilitated and not hindered.

Self-substantiation of novel foods and related health claims is not favoured by FSANZ processes, or indeed the food regulatory agencies across the State and Territory jurisdictions. The lack of trust in the food industry acting responsibly in this area lies in stark contrast to the level of trust shown in the food industry to produce food safely, as required in *Chapter Three. Food Safety Standards* of the *Australian New Zealand Food Standards Code* (FSC). This standard is outcomes focused requiring food companies to develop a food safety plan, and operate to it with record keeping demonstrating compliance through audit. Thus, there is a fundamental misalignment between the high trust of regulators in the food industry to produce food safely, and the almost absence of trust in the industry to introduce novel foods and technologies, and the claims about them, in a responsible manner, attesting to their safety, the consumer benefits which they provide, and the accuracy of any label claims.

Thus, there is an additional policy problem which the draft RIS has not identified.

Recommendation 1.

The AFGC recommends that the draft Regulatory Impact Statement include a further Policy Problem *"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."*

If this Policy Problem is resolved it will go a long way to facilitating innovation in the food industry, which is critical to growing and maintaining competitiveness of the industry sector.

SPECIFIC COMMENTS ON DRAFT RIS STATEMENTS

The AFCG has read the draft RIS in some detail and noted some statements which are worthy of additional comments.

1. Page 17, para 1, a comment is made that:
   "…robust pre-market approvals helped ensure that food in Australia and New Zealand was safe to eat."
   In fact, the greatest change which occurred with gazettal of the new FSC in 2001, was a move from prescriptive standards to 'outcome based' standards, and introduction of food safety standards which, as noted above, required business to produce safe and suitable food. Approval processes for new technologies were more straight forward with little or no dietary modelling. They relied more heavily on classic toxicity studies to demonstrate safety.

2. Page 27, para 3, a comment is made that:
   "…industry can make unregulated claims regarding the environmental sustainability of a product (e.g., 'dolphin-safe tuna' or 'carbon-neutral beef')."
   The AFGC does **not** agree that the industry can make unregulated claims regarding the environmental sustainability of a product. The Government through the Australian Competition and Consumer Commission (ACCC), as mentioned further down, has regulated the conditions under which claims can be made in that they must not be misleading.

3. Page 32, last para, a comment is made that:
   "…*the pathway for high-level health claims has never been used and is redundant and could be removed to streamline the Act*."
   The AFGC agrees that this pathway has never been used, but the AFGC does **not** support its removal unless an alternative more accessible pathway is introduced. The AFGC's issue with the pathway is that it set a very high bar for substantiation of high level health claims, essentially to the level of therapeutic goods under the Therapeutic Goods Administration (TGA). Clinical trials with enough statistical power to detect proposed benefits are considered the 'gold standard' of substantiation for high level health claims. Such trials are, however, extremely expensive. The AFGC considers the FSANZ Act should be modified in a way which results in a more practical and supportive approval process for high level health claims.

Recommendation 2.

The AFGC recommends that a regulatory approval pathway for high level health claims continues to be provided for in the FSANZ Act.

4. Page 35 penultimate para. The comment suggesting FSANZ's assessing amendments to the food standards in isolation provides limited:
   "Consideration of incremental, accruing impacts on population health (for example, exposure to a multitude of processing aids over time)."

is grossly misleading and suggests there may be sizable public health consequence which is not being addressed either by regulators or industry.

Many processing aids used in food manufacturing do not carry through to the final product, and if they do, they are present in very small amounts. Thus, their potential for negative health impacts is very, very low. There is little likelihood, and indeed no evidence, of accumulative impacts on health from their use either individually or in combination. This statement simply plays back the anti-industry public health activists' mantra that '*absence of evidence is not evidence of absence*' when actually, it is.

5. Page 52, third dot point, a comment is made that:
"...this trade objective is subordinate to public health and safety objectives."

   The AFGC does **not** support this statement due to its absolute nature. A modern regulatory system is founded on proportionality. Public health and safety are paramount, but foods do contain safety risks for some individuals (e.g. allergens) and are still allowed to be produced and sold. Regulatory requirements and industry safety systems reduces the risk to consumers, but they are not eliminated. International trade and the commercial interests of industry are clearly very important and should be supported by the food regulatory system. The primary objective, however, is protecting public health and safety with food industry's interest coming a close second.

6. Page 52, fourth dot point, which address the criteria which the FMM must meet to request a review.

   The AFGC considers that if the FMM request a review, they must meet the following criteria:

   a. specify which ministerial guidelines had not been considered and present the evidence for that argument;

   b. bring forth technical evidence which would contradict, or undermine FSANZ's decision regarding an application or proposal to amend the Code;

   c. agree to reimburse FSANZ the cost of the preparation of the review.

The recent review of application *A1155 – 2'-FL and LNnT in infant formula and other products* cost FSANZ 4000 working hours and $1million and resulted in no change to FSANZ's recommendation. Jurisdictions requesting a review must be prepared to meet at least some of the cost of the review to avoid reviews being conducted with little or no justification.

Recommendation 3.

The AFGC recommends that the FSANZ Act be amended to require the monetary cost of Food Minister's Meeting requested reviews of FSANZ's recommendations regarding amendment of the Food Standards Code be met by jurisdictions supporting the review request.

RESPONSES TO QUESTIONS POSED IN THE DRAFT RIS

Q1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

The AFGC identified one important **additional** Policy Problem in the preceding section of this submission and proposed the following:

> ***"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."***

The AFGC considers, however, that there are a number of other important Policy Problems which might be considered. These include:

1. ***There is no single preeminent Authority in Australia governing food regulation***. The draft RIS has identified a number of issues which could be potentially resolved if a 'National Regulator' were established in Australia. Such an agency could, for example, address issues such as helping to define and determine whether particular products are 'foods' or 'drugs' at the food drug interface as described in the draft RIS (pages 44-45);
2. ***There is no clear definition of the scope of regulatory dealings with food that the FSANZ Act covers***. Food is defined in the Act, including defining that it is **not** being a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*. However, food may be regulated in many ways, and indeed it is. Food products are subject to regulations from other regulatory agencies including the *National Measurement Institute*, the *Australia Competition and Consumers Commission* and the *Agricultural and Veterinary Medicines Authority*. Moreover, there are numerous additional agencies at State and Territory level which regulate aspects of food production, processing and sale. Some of the regulatory systems address sustainability (see below).

Recommendation 4.

The AFGC recommends that the FSANZ Act be amended to restrict FSANZ's regulatory scope to dealings with food as a consumed product encompassing and limited to the food safety aspects of food processing and handling, and to food compositional requirements and food labelling requirements which may be required to assist the nutrition and health of consumers.

This recommendation, if adopted, will make it clear that FSANZ's activities should **not** extend to areas such as sustainability and ethics. The arguments supporting this are presented below.

Q2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

As the draft RIS notes (page 26, penultimate para.):

> *"FSANZ's objectives are currently mute on issues of food sustainability."*

There, however, are a number of regulatory agencies which impose regulatory constraints on the food industry to achieve sustainability outcomes. And, these constraints are increasing.

For decades, the food manufacturing sector, along with many other industries, has been subject to regulations protecting the environment.These have targetted primarily the disposal of waste from manufacturing such as effluent discharges into water ways or materials allowed into landfill.

Since 2016, Australian State and Territory Governments have been introducing *Container Deposit Schemes* which impose a 10c deposit on beverage containers which can be redeemed by consumers at collection centres. More recently, legislation has been introduced banning the use of some 'single use' plastic products which will affect some products in the food industry. These measures are targetting litter, in particular, but also seeking to reduce the escape of plastics into the environment. The Commonwealth Government is also actively promoting greater recyling of plastics and other packaging across industry sectors through the National Packaging Targets. Whilst voluntary, there is some likelihood that if good progress towards targets is not made, mandatory requirements will follow.

The draft RIS suggests that (page 27):

> *"…industry can make unregulated claims regarding the environmental sustainability of a product."*

This statement is incorrect. All credence claims made on food labels are subject to the *Australian Competition and Consumer Act (2010)* which forbids misleading and deceptive conduct, including in the labelling of food and other consumer products.

Many food industry sectors already have a long history of commitments to voluntary actions to protect the environment. For example, Australian dairy manufacturers have set 2030 sustainability targets for greenhouse gas emissions intensity, consumptive water intensity and waste-to-landfill intensity. Dairy Australia has been reporting the progress by against sustainability targets since 2011.

As the draft RIS notes, there are many aspects of agrifood practices which have an environmental impact. The draft RIS fails to note, however, that there is already a plethora of policy, regulatory and self-regulatory instruments which address those concerns. If more regulation is needed, it should be through those existing arrangements rather than expanding the role of FSANZ into areas in which it has no experience, and no technical competencies, and which would require considerable extra funding to resource.

The AFGC does **not** support sustainability as an issue that should be addressed by FSANZ. The AFGC considers that an issue of such importance and far-reaching magnitude should the responsibility of the Department of Agriculture, Water and the Environment (DAWE) and other departments and agencies.

Recommendation 5

The AFGC recommends the FSANZ Act not be amended to expand FSANZ's responsibility to issues related to sustainability.

Q3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

The AFGC is unaware of any examples of the current food regulatory system having regard to indigenous culture and food expertise in amendment of the FSC. As noted in the draft RIS, and as the AFGC understands, a history of safe use of a foodstuff in other cultures, including in indigenous cultures, may be included in the risk assessment of a novel food under *Standard 1.5.1 Novel foods*. Permitting a novel food from an indigenous culture may require, for example, specific food preparation directions for the safe use of the food.

Such an example is the production and milling of native grains (known as Dhunbarr) which have been grown and eaten for thousands of years by Indigenous peoples, and therefore may be considered a traditional rather than a novel food. Non-traditional methods of processing are applied for cultural reasons. Research by the University of Sydney[2] is investiging and consulting with Gomeroi people to determine if current technologies could be applied to ensure holisitic success of business ventures.

The AFGC is aware of the sensitivity around issues such as the appropriation of indigenous cultures' intellectual property which might include food types and their associated cuisine. The AFGC, however, does not have a formal position on the issue at this stage.

The AFGC does, however, see value in FSANZ consulting with appropriate indigenous organisations and communities when raising proposals or assessing applications which may have implications for indigenous cultures and their food expertise. The FSANZ Act might be amended to specifically call out this consultation requirement or it may be equally well served simply by FSANZ including such considerations in its business operations.

The AFGC notes that lessons may be learnt from the New Zealand Government in the way that it recognises Māori culture and food expertise through the Crown's obligations to the *Treaty of Waitangi/Te Tiriti o Waitangi*. Additionally, *The Public Service Act 2020* delivers a legislative framework that highlights the role of the public service at all levels in supporting the partnership between Māori perspectives and the Crown and extends to trans-Tasman programs and regulatory agencies where the New Zealand Government is a member or partner.

[2] https://www.sydney.edu.au/content/dam/corporate/documents/faculty-of-science/research/life-and-environmental-sciences/sia-native-grains-paddock-to-plate.pdf

A tangible example of this is the *Strategy for New Zealand Food Safety 2019-2024*[3] and Action Plan[4] produced by the Ministry of Primary Industries which focuses on the future and how risks would be effectively managed while continuing to deliver for New Zealand consumers and food business. The Strategy has a chapter (chapter 4) dedicated to working in genuine partnership with Māori in which it states (page 12)

> *"New Zealand Food Safety/Haumaru Kai Aotearoa seeks to actively build stronger relationships and partnerships with iwi/Māori to support economic, environmental, social and cultural aspirations. We will ensure that iwi/Māori – as kaitiaki (guardians), as hunters and gatherers of indigenous and wild food, as consumers and as food business owners – are properly involved in development of the regulatory systems that influence their broad span of food-associated activities. We will continue to improve our ability to communicate information on food standards and guidelines so that Māori food businesses and marae based initiatives grow and prosper."*

The AFGC would welcome the opportunity to have further discussion on the issue either as part of the current review of the FSANZ Act, or through an alternative policy development initiative.

Option 1: Retain the status quo

Q4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

The AFGC considers Option 1 would represent an exceedingly **negative** outcome for the sector.

The draft RIS has identified three major Policy Problems. In addition, the AFGC has identified further policy problems (see earlier). Clearly, retaining the *status quo* would not address those policy problems at all.

In an earlier submission to the current review of the FSANZ Act, the AFGC provided compelling argument for the update of the FSANZ Act and re-states key elements below.

MAJOR REFORM OPPORTUNITY

The AFGC considers that the current review of the FSANZ Act as well as the concurrent reviews of other elements of the food regulatory system, represent a rare opportunity for major reforms of the food regulatory system.

The draft RIS proposes many reform ideas to address problems most of which derive from the institutional arrangements governing the food regulatory system. Legislated processes and timelines, split responsibilities for standards and enforcement, lack of a clear hierarchy in decision-making requiring consensus outcomes, differing bureaucratic priorities, and imbalances in regulatory cost between

[3] A Strategy for New Zealand Food Safety 2019-2024 (mpi.govt.nz)

[4] New Zealand Food Safety Action Plan (mpi.govt.nz)

jurisdictions has resulted in a food regulatory system which is ill-suited to support the role of the food industry in the immediate to long-term future.

The review is a once-in-20 years opportunity to reset the ANZ food regulatory framework creating a new environment conducive to industry growth and profitability, to the benefit of wider community and individual consumers.

The Government's deregulation agenda

The Australian Government has strong deregulation policy agenda[5]. The agenda's objective is:

> "*ensuring that, where regulation is required, it is implemented with the lightest touch - that it is designed and applied in the most efficient and timely way, with least cost on businesses.*"

More specifically it is:

> "*reducing the regulatory burden for food manufacturers in an initial focus on exporting.*"

The food and beverage manufacturing sector has a strong record of exporting greater volumes of value-added food products in recent years. Strong export growth can only be achieved through having a strong competitive and profitable domestic market for food companies to use as platform for export growth. Regulatory burden in Australia should be as low as possible whilst maintaining high levels of consumer protection. Best practice regulation includes preparation of regulatory impact assessments to ensure the use of regulations is fully justified by the magnitude of the benefit. The development of food standards requires regulatory impact assessments. However, on occasions FSANZ determines such assessments are not required, although the basis for these determinations is obscure and not clear to stakeholders.

COVID-19 recovery – relevance to the current review

The need for sensible regulation of the food industry has never been stronger due to the current COVID-19 pandemic. The pandemic has pushed the economies of both New Zealand and Australia into deep recessions. Governments in both countries are looking to the food manufacturing sectors to assist with the recoveries of their respective economies. In Australia food manufacturing has been identified as a *National Strategic Priority*. It has been charged with developing an industry 'roadmap' for reinvestment creating jobs, improving productivity, and boosting exports. In addition, the Government wants the industry to become more 'resilient' to pandemics and other possible shocks by increasing sovereign capability i.e. moving to more manufacture onshore. A clear corollary is that the regulatory burden across the industry must be minimised.

In March 2021, the Australian Government released a *Modern Manufacturing Strategy* which included a *Food and Beverage National Manufacturing Priority road map*[6]. The road map describes a path to growth for the sector based on investments to make the sector more innovative and efficient. The success of the

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[5] https://pmc.gov.au/domestic-policy/deregulation-taskforce

[6] Food and Beverage National Manufacturing Priority road map | Department of Industry, Science, Energy and Resources

road map will be dependent on many factors, not least of which will be Australia having a supportive food regulatory system which encourages innovation and growth.

Institutional Arrangements

At the beginning of the COVID-19 outbreak in Australia, Prime Minister Scott Morrison convened a National Cabinet with Premiers and Chief Ministers of the States and Territories. In addition, a National COVID Coordination Committee (NCCC) of eminent persons to advise the National Cabinet and 'remove roadblocks' to a national response to the epidemic was set up. The National Cabinet and NCCC gave clear indications that the Council of Australian Government (COAG) and its bureaucratic structures and mechanism were poorly suited to rapid decision and actions needed to tackle the national emergency. A report, commissioned by the National Cabinet, was released which confirmed the unwieldy nature of COAG, including its Ministerial Forums. The *Review of COAG Councils and Ministerial Forums*[7] ('the Conran Review") opined that most, if not all, formal COAG Councils and ministerial forums were

"inefficient and often ineffective with:

- *Complex convoluted arrangements*
- *Slow processes with over-engineering of issues*
- *Excessive focus on secretariat functions*
- *Significant funding expended on low priority projects with indeterminate timeframes and excessive secretariat costs including meeting arrangements and catering."*

The review went on to group COAG Councils and Forums which should either be maintained, disbanded, or convened for specific tasks (rather than adhering to a schedule of meetings). The Forum of Food Regulation (now called the *Food Minister's Meeting*; FMM) was included in the latter group. If the recommendations of the review are acted upon there will be a substantial upheaval in the food regulatory system. Regulatory processes would be streamlined, with a smaller bureaucracy and a focus on outcomes. As the Conran Review concluded. successful reform

"will come down to everyone ... maintaining a strong focus on delivering priority outcomes."

The current Review of the FSANZ Act and the wider food regulatory system can gain authority from the Conran Review. It provides good argument that bureaucratic processes for Ministerial Forums are vastly overdone. This depiction can be readily applied to FMM.

For example, the FMM still has to formally sign off on every new processing aid amendment to the FSC recommended by FSANZ. There can be little justification for these trivial matters to command the attention of FMM Ministers. The same can be said for approvals of foods derived from gene technology - approvals outnumber rejections 87 to zero.

[7] https://www.pmc.gov.au/sites/default/files/final-report-review-coag-councils-ministerial-forums.pdf

As the Conran Review describes, Ministerial Forums should determine fundamental strategic issues for the food regulatory system. Strategic issues will be identified, at least in part, by the objectives of the FSANZ Act and might include:

1. Bringing clarity to how the food regulatory system might support the food industry, rather than simply regulating it, through practical application of the principle of proportionate regulatory response;
2. Developing a deeper understanding of how the food regulatory objectives might integrate with broader public health objectives through encouraging innovation and voluntary guidelines to better products, rather than hurdles in the form of prescriptive and restrictive pre-market assessments;
3. Fostering a more collegiate approach among the stakeholders recognising the presumably shared objective of a food system able to meet the nutritional and lifestyle needs of all Australians. There is already precedent for this as the *Health Star Rating* front of pack nutrition labelling system was developed through a partnership between representatives from Government, public health, consumers and industry.

Q5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

The AFGC considers that the current review of the FSANZ Act draft RIS is the first concrete step towards major reforms of the food regulatory system. Simply put, it comprehensively demonstrates substantial room for improvement in how food regulation can be improved in Australia.

The food industry carries a great risk if reforms are not forthcoming. Regulatory burdens will increase, limiting the food industry's ability to innovate and compete.

The wider community, however, shares that risk. An antiquated food regulatory system will result in a food manufacturing sector unable to meet the needs and expectations of the community through domestic production. Furthermore, imports will also be hampered in their ability to adapt to changing consumer needs as they too are subject to regulatory restraints.

If reform does not occur, it is a missed opportunity and will result in food regulatory system that is antiquated, inefficient, and not modernised to address the current dynamic food supply and international regulations approaches or enabling economic growth. In short, everyone is a loser if substantial reforms are not enacted. Furthermore, failure to reform appropriately will miss a rare opportunity to 'future proof' the regulatory framework, in order to permit its resilience and relevance to successfully represent an innovative food supply not only today, but into the future.

Q6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

The AFGC does not possess any data as requested. It is obvious, however, that delays result in opportunity costs to industry to profit from the new business developments to be created by amending the FSC. Moreover, the wider community misses out on the spill-over benefits from the enhancements to the food system which accrue for the continuous improvements in products and processes of the industry.

Q7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

The AFGC considers the draft RIS is comprehensive in identifying both costs and benefits. The AFGC is not in a position to comment on the magnitude of cost or benefits in the quantitative analysis being aware of the difficulty in obtaining data in this regard. Furthermore, the AFGC has not identified any further costs and benefits which need to be considered in the Option 1 *Status quo.*

Q8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

The AFGC does not possess any data as requested.

Q9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

The primary risk is that food regulation is not keeping pace with the food system

The AFGC supports the continued regulation of food and beverages. However, regulation must keep pace with the changing food supply and community expectations. Innovation is a key here – food and beverage manufacturers who fail to innovate and keep up with the global pace will lose relevance and lose business. This impacts the national economy. The regulatory environment must support innovation towards a healthier and more relevant food supply.

Food production and manufacture carry with them some risks. Historically, foods have been vectors of many infective diseases and hazardous substances. These may occur naturally, but they can also result from the mishandling of foods and human ignorance and/or negligence. This is the fundamental market failure which food regulation addresses.

The industrialisation of economies and urbanisation of populations has led to the development of a highly sophisticated, technically complex food industry. It shares the food regulatory system's fundamental objective of ensuring foods sold to consumers are safe and that consumers have sufficient information about them for informed choice. It should be appreciated, however, that the food regulatory system exists alongside consumer law, which also protects consumers, and indeed corporate law, which also places obligations on companies to behave responsibly in a way which protects the business.

There is, however, particularly in light of the COVID-19 outbreak, a legitimate question as to food regulations which are "must have" and others which are potentially optional. At the beginning of the COVID-19 outbreak severe concerns were raised regarding the functioning of global supply chains for many industries including the food and grocery manufacturing sector. This may have led to disruptions of food manufacturing in Australia leading manufacturers to seek alternative food ingredients and food additives to keep. This in turn may have led to variances in product compositions and consequently minor inaccuracies in product labels. At the time there were concerns that packaging itself was in short supply limiting food companies' options for changing packaging to meet the new composition. The AFGC sought agreement from the Food Regulation Standing Committee (FRSC) for an agreed framework under which industry would be allowed minor labelling non-compliances, as long as there were no adverse public health risk and consumers were not significantly misled as to the nature of the product they were buying.

FRSC readily accepted the notion that some regulatory requirements are not absolutely critical for consumer protection and do not need absolute compliance. Updating the FSANZ Act, in conjunction with the other reviews of the food regulatory system, provides an opportunity to substantially reduce the regulatory burden of current food regulations by reassessing need for some standards and whether they align with the concept of a proportionate regulatory response.

The AFGC is very concerned that **not** updating the FSANZ Act will bring other food regulatory system reviews and reform to grinding halt. The AFGC sees reforming the FSANZ Act as the lynch pin to comprehensive reform and it simply must proceed.

Recommendation 6

The AFGC recommends the review and reform of the FSANZ Act continue, recognising that other food regulatory system review and reform activities currently underway will be critically dependent on an updated FSANZ Act.

Inadequate resourcing of FSANZ

The AFGC considers the draft RIS should address the issue of resourcing of FSANZ.

FSANZ is a comparatively small agency and in recent years it has seen its workforce shrink by almost a third. There is no indication, that the workload in amending the FSC has diminished. FSANZ may have reduced some discretionary expenditures, but it is inevitable that some impact on FSANZ's core business has also occurred.

The draft RIS should address the implications of FSANZ's ability to meet their statutory functions within the resources available to the organisation. The corollary to this is that the RIS should also consider the resource implications on any recommendations (**options 2 and 3**) to expand FSANZ's statutory functions.

Poor prioritisation of legislated objectives issue for the system

The AFGC supports the current objectives of the food regulatory system in their broad intent. The AFGC considers, however, that greater clarity is required regarding the potential prioritisation of the objectives and the fundamental requirements which must be met before regulation is imposed.

Generally, industry stakeholders have a good grasp of the concepts of good regulatory policy. The AFGC notes, however, that public health stakeholders do not always have a good grasp of the role of food regulation. The Commonwealth Department of Health (DOH) has attempted to address this by hosting a workshop on public health stakeholders in early 2018. The purpose, as the AFGC understands it, was to inform the stakeholders that regulation was not the only policy instrument to address public health issues. It also sought to explain the concepts of best practice regulation guidelines to which the food regulatory system should adhere.

It is understood that the DOH conducted the workshop to address the misalignment across the stakeholder groups from the public health sector which was undermining the food regulatory system. In some cases, food regulatory development has been highly contentious with public health and industry groups appearing to be diametrically opposed regarding the nature of regulation to be imposed. With a better understanding of what the regulatory system can, and cannot do, and what the processes allow, more agreement on regulatory options is likely. Thus, the food industry can, and does, through both voluntary and mandatory actions support public health objectives. The AFGC considers the industry can continue to play a strong

role in this regard through a combination of product offering and comprehensive provision of information and continues innovation in products with enhanced nutritional attributes.

Need to define 'public health' and 'safety' in legislation to affirm the inclusion of long-term health and nutrition as a core objective

The rising levels of obesity and associated non-communicable diseases (NCDs) such as coronary vascular diseases and diabetes and the dietary factors related to their aetiology has led to a broad public health policy debate regarding the possible role of food regulation in their mitigation. To date, however, the regulatory responses have been restricted primarily to:

1. Requiring food labels to carry a nutrition information panel (NIP) and ingredients list, with some exemptions;

2. Restricting the health claims to products which pass the Standard 1.2.7 Nutrient Profiling Scoring Criterion and for high level claims have received pre-market approval by FSANZ.

Of course, public safety and public health are very broad terms – safety usually relates to protecting the community from hazards causing acute harm, whereas public health is thought of in longer time frames with more insidious or chronic impacts. A similar approach might be applied when it relates to food but there are several other key differences when considering or defining public safety and public health consequences of food consumption. These differences are highlighted in the table (**table 1**) below, which compares and contrasts the concept of food-related illness – essentially food poisoning of various types – and diet-related diseases.

Table 1. Defining public safety vs public health

Defining Public Safety – as it relates to food	Defining Public Health - as it relates to food
Food poisoning is usually very short lived – from days (mostly) to months – with full recovery being the outcome in most cases	NCDs develop over of a long time and persist. Full recovery is rare, but management of ill-health to reduce the impact on the individual is often possible.
There are generally single causative agents of harm such as toxins, microbes, and physical contaminants.	The aetiology of the NDCs is multi-factoral with many factors in addition to dietary profiles being identified as risk factors. These include genetics, tobacco and drug abuse, alcohol consumption and physical exercise.
Few interactions between agents and environment. That is, there is a very strong cause and specific effect which is essentially independent of other factors. There are, however, some more vulnerable populations such as the old and infirm where illness may be more severe.	There are strong interactions between the factors associated with NCD risk. Thus, the risks are not simply additive but both antagonistic and synergistic effects seem to mediate overall risk.
Most individuals (but not necessarily all) in the population will be affected if they consume the hazard.	Many individuals do not develop an NCD even if their lifestyle risk-factors are high.
Consumption can be linked directly to an illness in both individuals and affected populations. Symptoms of food poisonings and infections are well described and often when an outbreak occurs food pathogens or toxins can be found in remaining samples of the suspect food.	The cause of NCDs cannot be traced to the consumption of an individual food at either the individual or population level. Dietary patterns at the population level can be associated with NCDs.

Unsafe hazard levels can be defined in foods and for many hazards those levels are specified in food regulations. Thus, there are maximum permitted concentrations of naturally occurring toxins and microorganisms.	There are no safe, or unsafe levels of individual food components **in foods** associated with NCDs. There are recommended daily intakes of nutrients to assist construction of healthy diets. This is to avoid nutrient deficiencies and to reduce the risk of NCDs.
Naturally occurring, and other hazards which may be associated with foods are well characterised both in terms of their nature and the levels at which they become hazardous and an appreciable threat to human health. This provides the strong evidence base for regulated restrictions at the **food** level.	There is a strong evidence base for **diet** level associations, with weaker evidence for causation, with NCDs. Associations are very limited at the food level. Thus, NCDs are considered 'diet-related' or 'lifestyle' related diseases, and not 'food related' diseases.

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 personal choice, and challenging to regulate. Regulation can assist, however, through 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, 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.

There are essentially five regulatory levers which Governments can pull to modify diets at the population level. All, of course, must pass the test of meeting good regulatory practice guidelines. They are:

1. **Fiscal measures** such as subsidies or taxes. This option is not available to FSANZ;

2. **Marketing practices**. Advertising and marketing in Australia are the responsibility of the Australian Communications and Media Authority. Its regulations are supported by co-regulatory and self-regulatory codes of the Australian Association of National Advertisers. The codes include guidance on the responsible marketing of food products to children. The marketing of over-the-counter drugs is also subject to regulations (under the TGA) and a co-regulatory guidance under the industry association Medicines Australia;

3. **Food labelling**. FSANZ has developed standards which both restrict and require nutrition information on food labels which are designed to assist consumers construct healthy diets;

4. **Food availability**. There are no formal restrictions on the sale of food designed to modify the diet of the population for better public health outcomes. Notwithstanding this, there are restrictions on the foods which can be sold in venues owned by governments. Departments of Health around Australia have produced guidelines for the foods which can be sold through school canteens and food outlets in government-owned or leased buildings. Interestingly, these guidelines differ quite substantially reflecting the lack of agreement among public health officials on nutritional profile criteria to determine healthy and unhealthy foods. This uncertainty is likely to challenge the development of any formal regulatory measure;

5. **Food composition**. Theoretically at least, regulations could be developed restricting the nutritional composition of foods. It would require category-by-category approach resulting in maximum and possibly minimum levels of selected nutrients in a very large number of products. It is beyond the purpose of this Submission to describe exhaustively the challenge to regulators and industry which this would represent. Suffice it to say, it would be a herculean task.

Particularly challenging is determining how well-suited food regulation is to address a public health issues, and particularly the rising incidence of overweight and obesity and associated NCDs. The poor health

outcomes are diet-related, but many other factors also contribute to their development. Actions by the food industry can assist in addressing these issues and indeed the food industry has a long record of:

1. **Product reformulation**. It is over 50 years since the first polyunsaturated margarines were developed and put into the market in response to advances in nutritional science suggesting a link between dietary saturated fat and coronary vascular disease;
2. **Product choice**. The food industry provides a wide range of products including low energy, low sodium, low sugar, high fibre variants from which healthy diets can be constructed;
3. **Product labelling**. The industry has included nutrition information panels on products for decades preceding the mandatory requirement for NIPs which commenced with the new ANZ FSC. In addition, the industry has made nutrient content and general level health claims on a voluntary basis to assist consumers understand the nutritional contribution products can make to a diet;
4. **Consumer education**. The food industry has assisted the promotion to consumers of healthy eating advice by promoting the Australian Dietary Guidelines on pack, in promotions, and on websites for many years, and will continue to do so.

The AFGC is unaware of any convincing scientific evidence which directly links food regulatory interventions above and beyond industry's extensive self-regulatory activities to an improvement in NCD public health outcomes – i.e. a reduction in the incidence of diseases such as obesity.

Thus, there is insufficient evidence to support including a definition of 'public health' in legislation to affirm the inclusion of long-term health and nutrition as a core objective. Indeed, if such a core objective were to be included in the FSANZ it would certainly result in severely regulatory restrictions of consumer choice as 'diet-level' nutritional advice was shoe-horned onto individual product categories. Notwithstanding this, the AFGC recognises that the food industry at the company level can, and indeed, does operate in harmony with the food regulatory system supporting public health objectives through continuously reformulating products and modifying claims, in response to new nutritional wisdom.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

Q11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector. Please select only one item Positive Negative Neutral

Option 2 | Modernise the Act to make it agile, resilient and fit-for-purpose

Component 1 - Clarify objectives and functions and reflect these in the Act

The AFGC considers Option 2 would have a **positive** outcome for the food manufacturing sector. As noted in the draft RIS, it would address the Policy Problems 1 and 2. Furthermore the AFGC considers it would address the major policy problem which the AFGC has identified earlier in this Submission vis:

> *"There is an inconsistent regulatory approach, dis-proportionate to risk, between food safety and pre-market approval standards."*

As the draft RIS specifies (Figure 3, column 2, box 3) Policy Problem 1 is resolved to *inter alia* result in:

"Processes and decision-making arrangements to amend food standards are reconceived to support more flexible and risk proportionate approaches."

Since the commencement of the current food regulatory system, three major changes (and many more minor ones) have occurred over the last 20 years which are challenging the current regulatory system. They are:

1. Greater consumer interest not only in the nature or properties of foods they purchase and consume but also in where and how they are produced. These have been termed 'values' issues as they may be more directly related to consumer opinions and philosophies. An example is 'free-range' food production which has no direct impact on the wellbeing of consumers. Government through the ACCC has regulated the conditions under which free-range claims can be made;

2. A rise in the incidence of overweight and obesity, and associated NCDs such as diabetes has led the FMM and the broader community to consider how this and other public health challenges might be addressed through food regulation;

3. The IT revolution providing consumers the means to seek, and indeed to demand, all the information they need about the foods they eat, and where they come from. Conversely, companies have almost unrestricted opportunities to communicate directly with consumers through their websites which can be accessed almost at any time by consumers through their smart 'phones.

To address these challenges, the AFGC supports a comprehensive and rigorous review and modernisation of the food regulatory system to ensure it is fit for purpose in serving all stakeholders well.

Improve regulatory responsiveness

The AFGC contends that the food regulatory system is neither agile, nor responsive.

It is relatively effective at processing and responding to the 'routine' but has proved to be ineffective and almost moribund when stretched to be innovative. The AFGC has highlighted these shortcomings in previous submissions to the current food regulation system reviews. Suffice it to say here, that the AFGC strongly supports the need to improve the responsiveness of the food regulatory system. This is not because there are any pressing major reforms which are required due to an urgent public health need.

As stated previously, the food system in Australia, serves the community well. Rather, it is simply that the regulatory system can do better. It is desirable and indeed becoming more necessary to remove some of the regulatory brakes on the food industry in Australia. And it would certainly assist industry, and the confidence of consumers it serves, if regulation and meeting the needs of consumers was modernised and took full advantage of the opportunities.

Align definitions and powers in legislation between therapeutic goods and foods

The AFGC considers that the regulatory arrangements at the food/drug interface are important.

However, the AFGC also considers that there is a danger that the regulatory arrangements could be overengineered to exacerbate the problem rather than simplify it. Proposals to clarify what is a food and what is not in any legislative changes will need to be approached with some caution. An example of this conflict is caffeine. FSANZ permits food to contain caffeine as an ingredient in a solid at 5% and a sports

powder at 5g serve has 4.9% caffeine, this equates to 245 mg. TGA regulates that caffeine should not be >100mg/3hr and no more than 400mg/day. So, one may be compliant with FSANZ and not with TGA – this is difficult for food manufacturing to navigate.

FSANZ's approach for setting its workplan and resourcing' problems for stakeholders

The primary objective of food standards is to protect the interests of the consumers. It is very much a public good function. In doing so, food standards create *inter alia* a blanket prohibition on anything being added to food, except other foods and a blanket prohibition (through Standard 1.2.7) on the provision of truthful, substantiated information about foods which might help consumers construct healthy diets and protect and promote their good health. When granting approvals for novel material (foods, nutritive substances, additives, etc.) to be added to foods or for nutrition or heath claims to be made on foods, industry is essentially providing information which removes the justification for the prohibition to be maintained, allowing industry to go about its business in bringing new foods to consumers and telling them about it.

Against this backdrop, it is essentially unfair to propose that FSANZ is granting industry a particular advantage through approvals; rather they are removing regulatory obstacles to industries' endeavours which ultimate benefit the whole community. There is little case for FSANZ to cost recover through imposing charges on industry for amendments to the food standards codes.

For over two decades, FSANZ has been able to charge industry for amendments to the FSC which provide exclusive capturable commercial benefit. This is essentially allowing the use of a technology over which the applicant (company) has proprietary rights. Under these circumstances, the benefit flow to the community is restricted as not all of industry is able to take advantage of the amendment.

FSANZ has reviewed its charging framework and charges over a number of years. It has failed to provide a convincing case for imposing greater levies, or scope of levies over that time.

The AFGC notes, that when the ability to impose a fee for service, particularly to expedite applications more speedily through FSANZ was to engage additional resources to ensure other non-fee paying applications were not delayed through resource shortages. The AFGC has not audited FSANZ resources closely but it suspects that fee paying applications may on occasions delay non-fee pay applications due to resourcing issues.

It should be noted that there is a considerable cost to an applicant simply in preparing an application. Notwithstanding the prescriptive process applicants need to prepare extensive technical data and analysis to convince FSANZ that an amendment to the FSC is justified.

Q12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

As stated earlier (please refer to Q2) in this Submission, the AFGC does not support the objectives of the FSANZ to be broadened to include sustainability. The AFGC considers it beyond the remit of FSANZ.

Q13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

The AFGC strongly supports initiatives addressing sustainability issues at the company level, at the collective industry level, and in partnership with Government-led initiatives, including regulatory interventions. Furthermore, the AFGC recognises Australia's agri-food sector is well placed to leverage its "clean and green" reputation. It is the case, however, that the Government already has the policy and regulatory agencies and instruments to pursue sustainability objectives, and there would be no additional advantage in expanding FSANZ's work in this area.

Q14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable

The AFGC is supportive of FSANZ's activities to better recognise and incorporate indigenous culture and food expertise within the current review. Please refer to this Submission's previous response in Q3.

The inclusion of more native foods and ingredients in the food supply could help to support availability and equity of indigenous food stuffs around the country. Incentives to include indigenous foods and culturally important ingredients in the Australian food supply through regulatory recognition may go further to increase native foods/ingredients in the food supply. This could facilitate innovation in the commercialisation of native ingredients with new food manufacturing.

The AFGC notes that the New Zealand Government has a constitutional obligation in relation to Maori under the *Treaty of Waitangi*. In relation to Australia, changes would be required to the FSANZ Act to enable recognition of Australian indigenous people. The AFGC does not have the expertise to advise on how this might be done. The AFGC would welcome the opportunity to contribute to further consultations on the issue.

Q15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

There may be significant opportunities for the Australian food industry to bring traditional foods to the broader market either as whole foods, or specialised ingredients and flavourings. The AFGC would support further exploration of these opportunities recognising the need for cultural sensitivity, respect for intellectual property, and fairness in business dealings.

The AFGC notes that traditional indigenous foods are already available in Australia. These include kangaroo, emu, crocodile, native fish, some insects, and some plants such a wattle seeds. There have been numerous commercial ventures over recent decades marketing '*bush tucker foods'*. To the AFGC's knowledge these have not required special regulatory responses, but this does not mean that future food regulatory policy should not be more sensitive to the issue of indigenous rights.

A key issue with bringing traditional goods to market is the current food regulatory system defines many of these foods as novel foods and hence must meet requirements that often prevent progress through the system and economic opportunity.

Q16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Component 2 | Facilitate risk-based approaches to developing or amending food regulatory measures

The AFGC views this component as **positive**. Risk-based assessments coupled with proportionate regulatory responses are the *sine qua non* to best practice regulation.

BEST PRACTICE REGULATION

It is generally recognised that regulations impose costs not only on the industries being regulated (costs of compliance), but also on government (enforcement costs) and on consumers (impacts on price and product availability). The AFGC is a strong supporter of best practice regulation – that is regulation, which is cost-effective, evidence-based and proportionate to the risk. Best practice regulation is also an agreed requirement of governments in Australia – States, Territories and Commonwealth. Governments have agreed to follow the COAG Guidelines[8] .

To regulate most equitably, the costs imposed must be outweighed by benefits accrued. Therefore, when developing food regulations, it is not only in the industry's interest but also in the interests of government, and ultimately the wider community to estimate and minimise costs. Imposing unnecessary costs is contrary to the government's objective of supporting a food industry which can contribute to economic activity and to the wealth of the nation.

Governments recognise the value of best practice regulations which, in brief, includes:

1. **Problem identification** – the issue being addressed by proposed regulation should be clearly identified regarding its nature, its magnitude and ramifications if not addressed;
2. **Outcome sought** – the anticipated outcome of imposing the regulation needs to be specified with a clear statement of who will benefit, and what the benefit will be;
3. **Other options** – alternative approaches to achieve the same outcome need to be canvassed with an assessment as to why regulation is the preferred option;
4. **Impact assessment** – before enacting regulations a thorough assessment of anticipated benefits and harms should be conducted. The assessment should be quantitative including monetary estimates, and regulation should only be adopted if the benefits clearly outweigh the costs;
5. **Consultation** – relevant stakeholders should be included in a formal, open, government-led consultation. Issues identified during the consultation should be addressed and, if necessary, the regulatory approach modified.

Such policy and regulatory frameworks provide governments with confidence that regulations are necessary and will be effective. They also provide industry and the public with a mechanism to hold government accountable for its policy and regulatory interventions. The net result will be best practice

[8] Best Practice Regulation. A guide for Ministerial Councils and National Standard Setting bodies. COAG. October 2007

regulation with appropriate regulatory responses, where the most important issues with the most severe potential impacts will attract the most substantial regulatory intervention.

The AFGC does not wish to prosecute exhaustively the importance of the COAG guidelines, but there are instances of clear deviations from those guidelines in the way some aspects of the current ANZ food regulatory system operates.

RISK ASSESSMENT AND PROPORTIONATE RESPONSE OF REGULATION

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[9] 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*[10].

The potential and appropriate roles of self- or co-regulatory measures in supporting values issues and public health issues should be considered as part of modernising the food regulatory system. Not only is it conceptually sound, but it also has other benefits such as distributing the cost of regulation away from government and onto industry. Of course, one of the concerns about self- and co-regulation is that there may be relatively low levels of compliance. Whilst compliance has to be absolute for food safety standards, there may be greater latitude in other areas where black letter law is applied. For example, very small packs of food with limited label space (less than 100cm^2) are exempt from mandatory NIPs. This example recognises the reality that regulation does not need to apply to 100 percent of the market. Food regulation can be restricted in its reach based on a number of factors including company size, the potential monetary impact and capacity to comply.

SELF-SUBSTANTIATION, SELF-REGULATION AND CODES OF PRACTICE

Food regulatory agencies already place a great deal of trust in the food manufacturing industry when it comes to producing safe food which sits at the top of priority food regulatory issues[11]. The fundamental requirement placed on the food industry is that food sold to consumers should be safe and suitable, but how that is achieved is essentially left to the food and beverage businesses. The law requires businesses to be able to demonstrate how food safety is assured through implementing an appropriate food safety plan, monitoring and recording aspects of its operations, and being assessed through periodic, independent audit. The frequency of audit may itself be subject to risk assessment.

Thus, in assuring safe food and beverage companies effectively self-substantiate that their food and beverage products are being produced safely. There is a high degree of trust that businesses will do the

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[9] Labelling Logic. Review of Food Law and labelling Policy. Commonwealth of Australia 2011.

[10] www.foodregulation.gov.au

[11] www.foodregulationsecretariat.gov.au

right thing and protect their consumers. This should give confidence to regulators and stakeholders in other areas such as nutrition and health claims, new technologies, novel foods and values issues that industry can also be responsible in self-substantiating.

To provide additional levels of confidence, however, formal oversight by regulators, and indeed other stakeholders, can be incorporated into self- or co-regulatory codes of practice resulting in outcomes which work for industry, serve consumers well and satisfy government that appropriate levels of protection are provided.

A very successful example of how this works is the Allergen Collaboration and associated work of the *Allergen Bureau* (www.allergenbureau.net) which has established, and continually works to improve, an industry best practice approach to assist companies to reduce the risk to consumers with food allergies through allergen management and allergen labelling.

The ACCC[12] also recognises the value of self-regulatory and co-regulatory alternatives to black letter law in the form of voluntary industry codes of practice. The benefits include:

1. more flexibility than government legislation. Codes can be amended more efficiently to keep abreast of changes in industry's needs;
2. codes are less intrusive than government regulation;
3. industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply;
4. codes can act as a quality control within an industry;
5. complaint handling procedures under the code are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies.

The governance of codes of practice can, and indeed should, include government and other stakeholder representation especially on topics where FSANZ may not be a subject matter expert. Indeed, confidence in the governance of codes of practice, particularly with respect to the level of protection they provide, is critical to their acceptance as practical alternatives to black-letter law.

In reality, if the concepts of risk assessment and proportionate regulatory response are to be truly implemented, more prominence and opportunities for industry self-substantiation and formal codes of practice should be considered. The AFGC strongly supports both.

The AFGC's views on the components of Option 2 are as follows:

1. *Better use of FSANZ's other regulatory instruments (guides and codes) could increase the system's agility and responsivity to change*.

   Agreed. Guides and codes of practice are well excepted alternative regulatory measures to address low-risk problems consistent with the concept of proportionate regulatory responses.

[12] Guidelines for developing effective voluntary industry codes of conduct. ACCC July 2011.

2. *Implementing a decision-making tool may lead to better uptake of the full suite of instruments available to FSANZ.*

   Agreed. A formal decision making tool is likely to lead to more consistency in the regulatory response adopted, giving more certainty to industry of any outcomes to applications or proposals addressed by FSANZ.

3. *Risk could drive processes in relation to applications and proposals.*

   Agreed. Lower risk issues should command less onerous requirements from the applicant and FSANZ alike.

4. *Decision-making arrangements could allow for delegation by the FSANZ Board and Food Ministers' Meeting.*

   Agreed. The AFGC supports delegating decisions for low-risk, routine matters to FSANZ Board and staff (see below for more detail).

5. *The Act could provide for FSANZ to accept risk assessments from overseas jurisdictions.*

   Agreed. FSANZ should be able to accept risk assessments from competent relevant overseas authorities, subject to an initial assessment to ascertain that this was appropriate.

6. *The creation of new pathways could expedite low-risk amendments to food standards.*

   Agreed. This is similar to point 3, above. The new pathways would comprise different process and requirements for evidence based on risk.

7. *An additional pathway to bring very low risk products (including additives and ingredients) to market could support greater economic opportunities for food businesses.*

   Agreed. The AFGC considers that applications for processing aids and foods derived from gene technology could be subject to little or no regulatory overview particularly if they had been approved by regulatory agencies overseas.

The AFCG **supports** component 2 as it helps the regulatory system keep pace with technological advances by providing regulators with guidance, new tools and other resources.

Q17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

The AFGC **supports *in principle*** delegation of decision making to the FSANZ board for amendments which are considered to be low risk (as yet to be defined).

Many applications to amend the FSC are straightforward and considered 'routine'. Notwithstanding this, their efficient processing is important to the individual food company making the application. Most often, such applications are seeking approval for a new processing aid, a new additive or on occasion a new food derived from gene technology.

In providing this support the AFGC also considers that safeguards are required which would include:

1. **A service charter from the FMM delegating the decision-making** powers on the basis that the powers:
    a. were temporary to be renewed following periodic review (i.e. perhaps every three years)
    b. could be withdrawn for specific applications or proposals by majority decision from the FMM
    c. decisions could be overridden or reversed by the FMM by majority decision, under certain circumstance.

2. **A robust and transparent framework** within the FMM service charter which describes how FSANZ would determine whether it had the delegated power of decision making in any particular instance. The framework might consider aspects such as existence of overseas regulatory approvals, similarities to previous approvals provided, intended use, and levels of exposure. Many processing aids, for example do not carry through to the final food, so are highly unlikely to represent a health risk.

3. **Restrictions on any potential scope creep** through provisions of the agreed FMM service charter with FSANZ.

4. **Applicants to be provided the option** to choose whether their application should be determined solely by FSANZ's processes, or whether to seek a decision from the FMM.

5. **Provision for an appeal** by applicants to allow the decision to be taken to the FMM.

The AFGC would only support the delegation of decision-making to FSANZ if other reforms of the system sought by the AFGC proceed, and specifically that support of an innovative, competitive food industry is included as a major objective in the reformed FSANZ Act. This would support a 'culture' within FSANZ more sympathetic to industry's views than perhaps currently exists. Also, the new arrangement may lead to addition resource requirements for FSANZ. FSANZ should receive additional funding for decision-making activities.

Recommendation 7

The AFGC recommends that if the Food Minister's Meeting (FMM) delegate any decision making powers to Food Standards Australia New Zealand (FSANZ) those powers should be confined to low-risk, uncontroversial applications and proposals to amend to the ANZ Food Standards Code defined within a bespoke Service Charter between the FMM and FSANZ.

Q18 What types of issues do you think can be appropriately dealt with in codes of practice or guidelines?

The AFGC considers Codes of Practice or Guidelines would be **valuable**.

To provide additional levels of confidence, however, formal oversight by regulators, and indeed other stakeholders, can be incorporated into self- or co-regulatory codes of practice resulting in outcomes which work for industry, serve consumers well and satisfy government that appropriate levels of protection are provided. A very successful example of how this works is the work of the Allergen Bureau (www.allergenbureau.net) which has established, and continually works to improve, an industry best

practice approach to assist companies to reduce the risk to consumers with food allergies through allergen management and allergen labelling.

The governance of codes of practice can, and indeed should, include government and other stakeholder representation including industry when making changes which impact food. As stated previously the ACCC[13] also recognises the value of self-regulatory and co-regulatory alternatives to black letter law in the form of voluntary industry codes of practice.

Q19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

The AFGC does not possess any data as requested.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

The AFGC does not have the data required to estimate the potential savings as requested. There has been no need in the past for the industry to document the costs of individual aspects of bureaucratic processes of the food regulatory system, either at the individual company level, or collectively across the whole industry.

Q21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Component 3 | Build in flexibility to create bespoke regulatory sandboxes

The AFGC considers the concept of building in flexibility through the creation of bespoke regulatory sand boxes as **positive** and wishes to understand in more detail the concept and tangible benefits**.**

Innovation is the cornerstone of the food processing industry's return to growth. Innovation in both product and production holds the key to:

1. raising business productivity and profitability. Profits allow reinvestment in the company to improve its products, including in the nutrition and health space;
2. improving competitiveness in both domestic and export markets;
3. opening new markets;
4. responding effectively to consumer trends.

The AFGC considers that regulatory sandboxes should not be at the expense of substantial reforms in other areas or be a proxy for not addressing issues within the application process itself. The opportunity to use a sandbox, therefore, should be an additional offering of the regulatory system. Furthermore, public

[13] Guidelines for developing effective voluntary industry codes of conduct. ACCC July 2011.

safety should remain an imperative under this framework. Thus, some sort of risk assessment should precede operation of the sandbox.

The AFGC notes that The Ministry of Trade and Industry in Singapore has a 2020: Agri-tech Regulatory Sandbox in food technology to allow

> *"Government agencies to quickly review regulations for agri-tech companies and farms, to support industry growth, innovative business models, and farming technology".*

Furthermore, the AFGC notes that the Australian Energy Market Commission (AEMC) [14] has adopted this concept to make it easier for businesses to do test runs on innovative ways to deliver services to consumers, and has provided advice on rules to implement regulatory sandbox arrangements. The AEMC in late 2019 released a final report [15] that set out a pathway to introduce regulatory sandbox arrangements and enable proof-of-concept trials in the national energy markets.

One of the key recommendations from this report is that for companies to access regulatory relief, proof-of-concept trials would need to be time-limited and meet appropriate eligibility criteria, and appropriate consumer safeguards must remain in place during the trial. It also notes that there is a need

> "*to balance the need for the framework to be transparent and easy to use for trial proponents while providing sufficient protection to consumers and other parties that may be impacted by trials."*

The AFGC notes reference in the draft RIS to Health Canada[16] utilising regulatory sandboxes, specifically in the area of Artificial intelligence (AI) and that the

> *"the notion of "regulatory Legos" might offer the agency the required flexibility to meet the demands of emerging and yet-to-emerge technologies that are not adequately addressed by the existing regulation."*

The AFGC seeks to better understand the practical and tangible outcomes of such a concept and sees opportunity for low-risk activities. such as a trial of 'extended labelling' i.e. QR codes on food labels instead of full on pack information.

Recommendation 8

The AFGC recommends that the concept of bespoke regulatory sandboxes be included in reforms of the food regulatory system, including in reforms of the FSANZ Act in a way which preserves high levels of public interest protection, whilst facilitating innovation in the food industry.

[14] https://www.aemc.gov.au/news-centre/media-releases/recommended-rules-regulatory-sandboxes

[15] https://www.aemc.gov.au/sites/default/files/2019-09/Regulatory%20sandbox%20toolkit%20-%20Final%20Report.pdf

[16] https://www.bioworld.com/articles/498030-health-canada-making-use-of-regulatory-sandbox-to-address-ai

Q22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

The AFGC has not had time to consider in detail a response to this question but some ideas which have been suggested include:

1. trialling QR codes on similar on-label devices to allow consumers to access information which would normally appear on pack but is not critical to the safe consumption of the product. For example, the food additives used in the products;

2. commercial trials of a new product which has been successful overseas but may not have regulatory approval for some of minor components or technologies used in making the product (for example processing aids). In this case, the product would present no public health and safety risk. Compliance with all mandatory labelling requirements important for safety would still be required, but some labelling requirements might also be relaxed;

3. consumer acceptance trials a new 'nature identical' ingredient which might be developed using a different technology. For example, a protein which had been developed in a bio-fermenter which was the same as protein from a 'natural' source might be trialled with labelling clearly stating its source.

Q23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Component 4 | Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation

The AFGC considers the concept of FSANZ as a hub of food safety intelligence to drive future regulation as **positive**, and is **supportive in *principle***, but wishes to understand the concept in more detail.

Currently one of FSANZ's roles is horizon-scanning to detect and consider the implications of emerging food safety hazards. The AFGC supports the concept of a single agency leading this activity but in reality, it should be a very collaborative effort.

There are numerous agencies across the public sector in Australia which have expertise in food safety. They are in government bureaucracies, in universities and in the CSIRO. The AFGC considers that FSANZ could also leverage food safety expertise within industry where practical aspects of manufacturing safe food are well understood. FSANZ's role could be formally described and, with appropriate resourcing, act as a lead agency gathering and collating information, preparing analysis and developing options for possible regulatory and non-regulatory responses.

Q24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

The AFGC considers that food safety data falls into separate, but linked, areas:

1. **Public health incident data** comprising the information about the people (number, gender, age co-morbidity, outcomes etc.) who fell ill, and the identity of the causative agent of the food borne disease. This would include serological data to inform the epidemiological analysis of the outbreak, and possible links to other outbreaks;

2. **Root cause analysis** determining the circumstances leading to the outbreak, including any breakdown or inadequacies in accepted food safety hazard reduction activities;

3. **Food system surveillance** through monitoring of the food supply for potential hazards. FSANZ already has access to the *National Residue Survey*[17]. It may be appropriate to extend surveys to other potential hazards.

The AFGC **strongly supports** this type of data being collected and analysed. It can be invaluable in addressing food safety issues, thereby lowering the overall burden of food safety outbreaks on the community. It can assist continuous improvement across the food industry, again to reduce the incidents of food borne disease outbreaks. Importantly it can support the already strong reputation the Australian food industry has for safety in both the domestic and overseas markets.

Q25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector? Please select only one item Positive Negative Neutral

Component 5 | Foster new approaches to working with other agencies, with a focus on intelligence-sharing

The AFGC **supports *in principle*** the following elements (page 61) to support new approaches as follows (and reserves full support until more detail is provided).

FSANZ and the FMM could undertake periodic joint agenda-setting to agree on the proposals on which to focus. AFGC considers that criteria (see below) for setting and changing the FSANZ workplan program, in particular proposals, would be critical.

FSANZ could partner with government to make intelligence-led decisions and reduce duplication of effort through:

1. earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards;
2. collaborating with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response;
3. enhanced information sharing with agencies (including standard-setting bodies and other regulators).

The AFGC cautions that there will be resource demands for engagement with multiple overseas jurisdictions.

The AFGC suggests that FSANZ's databank could be available to research and academic institutions to drive high-quality research and policy work both across and outside government. This would have the benefit of:

[17] National Residue Survey - Department of Agriculture

- Informing project work carried out by FSANZ at the request of the jurisdictions;
- Providing data or data-linkage services to the general public.

The AFGC notes that consideration be given to security and the protection and privacy of commercial data.

The AFGC would **support** further functions of FSANZ which would contribute to a better public policy framework addressing nutrition and health. Any regulatory intervention, however, should be subject to rigorous assessment, based on strong evidence that a beneficial outcome will result, and be proportionate to the issue being addressed. Other additional functions may be in public health research, or consumer education. The AFGC notes, however, that other agencies exist at the Commonwealth level which can, and already do, carry out these functions such as conducting research. These include the Australian Institute of Health and Welfare (AIHW, www.aihw.gov.au), the National Health and Medical Research Council (NHMRC, www.nhmrc.gov.au) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO, www.csiro.au). The AFGC would not support duplicating the functions of these commonwealth organisation.

With regard to investigating food safety outbreaks, the AFGC notes that these outbreaks are currently investigated at the State or Territory jurisdictional level when they occur. Again, the AFGC does not support duplication of these functions. Nor does the AFGC consider there is a compelling case suggesting the current mechanisms for investigating food safety incidents are not working effectively.

The AFGC is also uncertain as to the nature of assistance FSANZ should be providing industry intending to make applications to amend the FSC. FSANZ already provides an Application Handbook to guide industry through the process of making applications. Moreover, FSANZ staff can, and do, contact the applicants providing feedback and assistance to assist the application process and progress, although on occasions there have been concerns regarding the time taken to provide feedback.

The AFGC recognises, however, that there is variability in the level of assistance FSANZ provides. There may be some benefit for applicants if the nature and extent of assistance could be standardised. This would help inform industry and manage their expectations, and it may allow FSANZ to better manage their expectations. The AFGC also suggests that a 'rapid response' be developed such that industry can access FSANZ feedback in a timely manner.

Q26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

The AFGC **supports the principle of cost recovery on the *proviso*** that it is justifiable, appropriate and proportionate. AFGC supports the findings of the 2001 Productivity Commission (PC) review of cost recovery by Commonwealth Government agencies, that well-designed cost recovery arrangements could promote economic efficiency and equity by instilling cost-consciousness among agencies and users.

Notwithstanding this, AFGC is concerned that cost-recovery approaches vary substantially within government from agency to agency. This variability suggests a lack of efficiency for government, and potentially excessive regulatory burden on industry.

AFGC supports the Australian Government Cost Recovery Guidelines[18] to ensure that agencies engaged in cost recovery conduct these activities in an effective and open manner. AFGC supports a mandate that departments, agencies, statutory authorities and boards responsible for cost recovery processes must adhere to these Guidelines without exception or omission.

The essence of the AFGC position on cost recovery is that there must be an equitable apportioning of costs between beneficiaries of any regulation viz:

- industry to pay for exclusive capturable and commercial benefit provided by specific regulations;
- the community, through the regulatory agency, to pay when direct, or spill-over benefits accrue to the community resulting from specific regulations.

The AFGC specifically **objects** to industry funding *in toto* the costs of running an agency. Apart from clear inequity in these arrangements, it raises issues of vested interests and conflict between the agency and industry. In effect, 100% cost recovery creates a perverse incentive leading to inefficiency, cost-padding and slower approvals.

The AFGC recognises the reality of cost recovery for services provided by the public sector. The AFGC considers, however, that in the area of food safety there is a strong public good argument that data about food safety issues should be put into the public domain as rapidly as possible. The draft RIS does not propose a mechanism for cost recovery which is equitable, and would be cost-effective and result in widespread dissemination of the information. If such data is only available on a cost recovery basis it is likely that some companies would not pay, and those that do may see no benefit in sharing the information with potential competitors.

Recommendation 9

The AFGC recommends that data and data-linkage services provided to industry by FSANZ, or any government agency, on food safety issues be considered a public good and thus not be subject to any cost recovery provision which would hinder the dissemination of critical food safety information.

The AFGC also points out that the quality of any data and data-linkage services will rely heavily on how complete, comprehensive and accurate the data is. Much of the data will rely on industry reporting food safety issues when they occur (even if no illnesses result). It seems unfair that industry would then be asked to pay for information from the databases which may assist their food safety systems improvement.

[18] http://www.finance.gov.au/publications/finance-circulars/2005/09.html#FMG_4

Q27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector? Please select only one item Positive Negative Neutral

Component 6 | Streamline FSANZ's governance and operations

The AFGC **supports** streamlining FSANZ's governance and operations and moving to a smaller, skills-based Board as suggest in the draft RIS. This is consistent with modern management practices and is likely to result in a more efficient, cohesive Board.

To emphasise the importance of New Zealand in the FSANZ arrangements, consideration should be given to ensuring that an appropriate number of Board members are from New Zealand.

Elevating FSANZ to a more prominent role

Food is regulated in three major areas:

1. **Food labelling** – prohibitions, restrictions, permissions and requirements for information which needs to be on food labels to provide for informed choice by consumers;

2. **Food composition** – restrictions and permissions as to the presence, or absence of levels of potential hazards which may be found in foods, or substances which may be intentionally added to food, or maybe a consequence of process used in food manufacture or handling;

3. **Food safety standards** – placing obligations on food businesses to ensure the way they produce, handle and prepare foods for sale results in food products which are safe and suitable for consumers.

Food labelling and food compositional standards (Chapters 1 and 2 of the FSC) are essentially national standards. Many products for sale through retail outlets in Australia are available across the nation. Smaller manufacturers may have local distribution, but their products are similar to products available elsewhere.

Food composition and labelling standards, in terms of protecting public health and safety tend to be less critical. That is, risk analysis regarding the origin of food borne hazards demonstrates that with a modern, technologically advanced food manufacturing sector most risk is derived from poor adherence to food manufacturing and handling standards, rather than poor compliance to food compositional or labelling standards. This has resulted (sensibly) in most jurisdictions devoting considerable enforcement resources to food safety standards, and far fewer to enforcing food labelling or compositional standards.

Establishing compliance with standards is relatively simple. Products can easily be obtained from retail outlets, and their compliance with labelling and compositional standards assessed by visual inspection and sample analysis. This function can be readily carried out by a central regulatory agency. The agency can also assess the implications of any non-compliance and determine appropriate enforcement action. Against this backdrop, AFGC considers there is a strong case for food standard development in Chapters 1 and 2 and their enforcement to be centralized through a single national agency- most logically through FSANZ.

To be clear proposals and applications to amend the FSC would remain essentially the same with all stakeholders able to make submissions to the formal FSANZ's public consultation processes. States and Territories would still be able to express their views along with other stakeholders. The AFGC is simply proposing that the enforcement of Chapter 1 - *Introduction and standards that apply to all foods* and Chapter 2 - *Food Standards* should be centralised in an expanded FSANZ.

The AFGC considers, however, that States and Territories should retain enforcement responsibility for Chapter 3 Food Safety Standards. Enforcement of food production and processing standards requires local inspection and audit of production systems and premises, and systematic sampling and testing of products for sale. Government has a role, particularly in production and systems surveillance and monitoring. This requires local offices and officers with local knowledge of the agricultural and food industries. Consequently, for optimal effectiveness, this area of standards enforcement is best carried out locally through direct interaction with businesses at site or premises level.

To effect these changes States and Territories would cede food regulatory power to the Commonwealth (and hence to FSANZ) for the development of food composition and food labelling standards, whilst retaining power to enforce food processing and handling standards developed under a national framework. The role of FSANZ would expand to allow it to develop, gazette and enforce food composition and labelling standards. This would have the additional benefit on allowing FSANZ to provide a central interpretive advice service for Chapters 1 and 2, which historically has been where most demand for advice resides. This would free-up resources of the States and Territories allowing them to concentrate on the enforcement of food safety standards.

There is, of course, already a precedent for central regulatory agencies setting and enforcing standards and regulations. In Australia, it occurs with the TGA and the ACCC. And indeed, FSANZ already has responsibility for enforcement of the FSC for imported goods. Admittedly this work is 'subcontracted' to Biosecurity Australia, but FSANZ establishes the risk classification of food and beverage products. Also, in effect, labelling and compositional standards are enforced by Biosecurity.

As stated previously in this Submission the AFGC does **not** consider FSANZ should have an enforcement role in New Zealand. If, however, FSANZ took over this role in Australia, it would be expected that it would liaise with the MPI in New Zealand to align enforcement priorities and approaches for labelling and compositional standards.

The AFGC recognises that in New Zealand enforcement is carried out by the MPI (MPI). The AFGC considers enforcement of compositional and labelling standards in New Zealand should remain with MPI. It should be noted, however, that a large proportion of food products are imported from Australia by New Zealand. In effect, therefore FSANZ would become a *de facto* enforcement agency for many products sold in New Zealand.

Recommendation 10

The AFGC recommends that the FSANZ Act be amended to provide for Food Standards Australia New Zealand in Australia only to take over enforcement of food labelling and composition standards (essentially Chapter 1 and Chapter 2) of the ANZ Food Standards Code with enforcement of *Chapter 3 – Food Safety Standards* to remain the responsibility of the individual State and Territory jurisdictions

Amend the FSANZ ACT to reflect a broader range of functions that FSANZ could deliver now and in the future

The AFGC is wary of extending FSANZ's functions too far. Apart from the extra resources FSANZ would require carrying out those functions, they may distract FSANZ from their core role of being the leading food regulatory agency across Australia and New Zealand.

The AFGC does **not** support FSANZ expanding its responsibilities to food fraud and food crime. These are criminal matters already covered by other legislation and enforcement agencies including the police. FSANZ has no current skills in crime investigation and enforcement. FSANZ could, however, provide technical advice into the potential food safety implications of food fraud on a case by case basis.

The AFGC would **support** FSANZ playing a greater role in increasing public awareness of food safety issues, as well as the role of food labelling and food regulation. Again, this should be subject to resources being made available.

Q28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

The AFGC considers there are few risks to stakeholders with the proposed changes as proposed in Option 2. However, the AFGC is conscious that with any legislated changes, there may be risk of unexpected consequences. Ideally, with the objectives of the FSANZ and its role in the food regulatory system clarified in an updated FSANZ Act there would be a high degree of congruency in the views of the Board. Supported by a well-resourced, competent staff the AFGC anticipates that, in line with the primary objectives of new FSANZ Act the Board would steer food regulation development to outcomes which met the needs of a competitive food industry and the consumers its serves.

Q29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

The AFGC agrees with the assessment of costs and benefits of Option 2 presented in the draft RIS and is generally supportive of this component.

Q30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

The AFGC does not have the data required to estimate the magnitude of these costs and benefits.

Q31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

The AFGC supports a well-funded, scientifically well-resourced food regulatory system with FSANZ at its apex. The resourcing of FSANZ has been an almost perennial issue with funding being a more acute issue in recent years. The issue of cost-recovery from industry has also been visited on an intermittent basis

since the late 1990s when FSANZ (as the then Australia New Zealand Food Authority) was allowed to charge companies for the resource needed to either expedite rapidly (i.e. jump the queue) an application to amend the FSC, or if the company was able to extract an exclusive capturable commercial benefit (ECCB) from the amended FSC.

Many applications do not result in an exclusive benefit to a food business. Rather they remove a prohibition on the use of a technology which many food businesses may subsequently use. Furthermore, as applications are often aimed at creating better products or better processes, there are wider community benefits either directly or indirectly. Applications may also allow a pathway to create more diverse or internationally accepted or harmonised products or processes. Applications are often used as a way to harmonise with international markets due to differences between countries and markets. Attributing the value to benefits is complex thus attributing a fair cost for FSANZ work function to any party is problematic. It is generally accepted that with a broad public good resulting from FSANZ and the food regulatory system the public should pay for it.

The AFGC is aware, however, that a substantial proportion of FSANZ work is thrust upon it by the jurisdictions through the FMM and FRSC. The AFGC is also aware that FSANZ provides services and functions to other parts of Government such as development of the Health Star Rating front-of-pack nutrition labelling system prior to its introduction. This would have commanded considerable resources within FSANZ. The AFGC understands these costs were not reimbursed from the Department of Health and Ageing.

The AFGC considers that if jurisdictions, or other parts of Government want FSANZ to undertake work which FSANZ does not consider key to fulfilling its objectives, then funds should accompany the requests.

Recommendation 11

The AFGC recommends that if FSANZ is requested to do additional work by the Food Minister's Meeting, by jurisdictions or by other Commonwealth Government departments additional funds should be found to cover the resource cost borne by FSANZ.

Q33 How often do you currently engage with the food regulation system through making applications to change food standards?

The AFGC itself rarely engages through making applications to change the food standards.

The AFGC in 2012 sought to amend the conditions prescribed in clause 16 of *Standard 1.2.8 - Nutrition Information Requirements* for claims related to the gluten content of food. Specifically, AFGC seeks to amend the current 'no detectable gluten' condition prescribed in paragraph 16(2)(a) for making a gluten free claim to a level of 20 mg/kg of gluten or less. Also, to amend the maximum level of gluten permitted in subclause 16(3) for making a low gluten claim from 200 mg/kg to 100 mg/kg.

Due to various reasons, the application was withdrawn. The proposed amendment would have brought Australia and New Zealand into line with the Codex Standard and the standards in force in Europe, and

many parts of Asia. Furthermore, the US FDA is currently considering amending their food standards to reflect Codex Standard 118-1979.

This alignment would have created more efficient international trade opportunities for Australian manufacturing companies, which will be able to manufacture products for the same standard in a great number of jurisdictions. It would have also removed some barriers to trade by enabling increased opportunities for imported gluten free products, and thereby creating more competition within the Australian market. Note that if the importing country does not accept a label format, then a unique label is still required. Trade agreements (in conjunction with harmonisation) would remove the regulatory burden of the requirement for unique packaging.

Q34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

The AFGC is an industry association with competencies which cover well the scope of activities undertaken by FSANZ. There is a respectful relationship between FSANZ staff and the AFGC Secretariat staff reflecting that common approach to regulatory issues based on a sound technical evidence base and best practice regulation principles. This respectful relationship also extends to scientific and regulatory affairs experts working in AFGC member companies.

From time to time, FSANZ seeks the direct assistance from the AFGC to better understand industry practices to help inform their standards development work, and its implications. And conversely, the AFGC also seeks clarity on some aspects of FSANZ's work to better understand the issues they are addressing. Thus, there are no significant barriers inhibiting engaging with FSANZ.

Engaging effectively with the food regulatory system outside FSANZ is more problematic. Each jurisdiction is unique in many aspects of how food regulations are managed. Moreover, there are often different views held by the states and territories on individual issues making it difficult to engage efficiently.

The operations of the FRSC and the Implementation Sub-committee for Food Regulation (ISFR) are more difficult to engage. Their work is somewhat opaque, although there has been more clarity in recent years with the posting of workplans on websites. That said, there are no formal mechanisms for stakeholders to raise specific issues with either committee or to influence the prioritisation of their work.

Pre-COVID-19, FRSC did hold periodic Stakeholder Roundtables which were an attempt to engage with the wider stakeholder community. The AFGC was able to present at the Roundtables, although to date there has been little evidence that those presentations influenced the thinking of FRSC to any great extent.

Q35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

The AFGC **supports** the concept of multiple pathways being available to industry to seek amendments to the FSC. These would range from full assessments by FSANZ through to industry self-substantiation with minimal or no checks. For example, a pre-market clearance may be one pathway to prevent this process from following the same pathway (and issues we are seeing now) with self-substantiated 'notified claim' process under *Standard 1.2.7. Nutrition, health and related claims*

Reframe legislation to support more agile, risk-based processes

The current prescribed processes provide little opportunity for FSANZ to exercise judgement in what must be done to meet the primary objectives of the FSANZ Act. They are able to determine if an application is complex or simple and this allows some modification in process. FSANZ is unable, however, to decide that if an application is very straight forward, or is essentially the same as a previous application (for example, as would be the case if two applications were made, one after another seeking approval for very similar processing aids).

Currently, 87 approvals have been sought for foods produced using gene technology under *Standard 1.5.2 Foods derived from gene technology* since its gazettal more than 20 years ago. In that time there have been no rejections and no proven public health concerns raised. FSANZ is, however, locked into the prescribed process with little flexibility to examine the applications in the light of what has gone before and fast-track the approval process.

Interestingly, FSANZ separates its approval processes into Risk Assessment and Risk Management. There is little evidence, however, that the outcomes result in a proportionate regulatory response, which is ultimately the purpose of the processes.

The AFGC supports a framework for varying processes of application assessment based on a risk assessment framework and subsequent varying regulatory responses including industry codes of practice. This idea has been proposed previously following a formal review (Blewett Review) of food labelling[19] which was carried out in 2011.

Create industry-led pathways to expedite applications and bring new products to market

The AFGC supports the concept of industry-led pathways to expedite applications and bring new products to market. FSANZ has proposed the concept in recent targeted consultations for reviewing *P1024 Revision of the Regulation of Nutritive Substances & Novel Foods*. Those pathways may well include industry self-substantiation of technical aspects of the application, which might include reference to overseas approvals, and substantial history of safe use in comparable markets.

The AFGC understands the State and Territory jurisdictions are uneasy with the concept of allowing industry to market novel foods without some form of assessed pre-market approval.

The AFGC supports a framework like self-determined GRAS[20] (Generally Recognised As Safe) for lower risk products that do not require public notification. This would create a streamlined pathway where there is an existing safety assessment from a comparable jurisdiction. Ingredients which have been subject to pre-market assessment in a comparable jurisdiction or extension of use is sought may be criteria for industry self-assessment. Consideration will need to be given to a situation if a comparable jurisdiction decides

[19] Labelling Logic: Review of Food Labelling Law and Policy. Commonwealth of Australia (2011)

[20] https://www.fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras

there is evidence to revoke a safety assessment, and what mechanism would come into play in order to alert authorities in our market.

Other potential solutions relating to additional pathways to develop or vary food regulatory measures

The AFGC considers that there are essentially three primary ways to develop food regulatory measures:

1. by FSANZ with full pre-market assessment and approval. Accepting risk assessments and approvals made by overseas relevant competent authorities would be included;
2. by industry, with a notification, and option for post-market assessment of some type to appropriate compliance;
3. by industry under an industry code of practice. The industry code could be referenced by FSANZ in which case it would be 'prescribed' code.

These models are essentially regulation, co-regulation and self-regulation.

The AFGC considers, however, that more predictability of process is also important to food companies. Thus, if information requirements, application timelines, and final outcomes were more predictable food companies would have greater confidence in putting products into the FSANZ assessment system. Predictability would improve if FSANZ's risk assessment and risk management functions were able to look at approvals in overseas jurisdictions, and were strongly committed to the principle of proportionate regulatory responses.

Other potential solutions relating to streamlining regulatory processes

The AFGC considers that once an appropriate risk assessment on proportionate regulatory response framework is introduced, there should be greater use of self-substantiation for approvals, codes of practice and guidelines should streamline regulatory processes.

Clearly accepting some scientific assessments from overseas jurisdictions is also a way to reduce substantially the burden of FSANZ's regulatory processes. For example, toxicity assessments are conducted in a very established, standardised manner. FSANZ's risk assessment processes would benefit if they were able to leverage toxicity assessments from overseas.

FSANZ may also, on occasions, be able to leverage risk assessments on substances which have been conducted by the TGA when they may have benefits for consumers when included in either foods or medicines.

The AFGC also considers that if FSANZ became the sole agency responsible for the development and enforcement of food labelling and food compositional standard, a substantial dividend in regulatory efficiency would result.

Option 3

Q36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? Please select only one item Positive Negative Neutral

Option 3 | Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

Component 1 | Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative

The AFGC is **not supportive** of change to the current system.

Food recalls are initiated when an outbreak of an illness is linked to a food product, or alternatively when a food company becomes aware that an error has been made in the production of a food product which may result it being unsafe for consumers.

Under both scenarios, local authorities are health agencies are likely to become aware of the problem first, and under the current system they would notify FSANZ to help initiate a recall. The AFCG is uncertain how arrangements can be changed which would result in FSANZ initiating a recall.

The AFGC is not aware of any shortcomings of the current system which indicates major shortcomings exist.

Q37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

The AFGC is unaware of any food businesses which have quantified these costs.

Q38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

In Australia, some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions are less favourable to industry in trying to protect consumers. This level of inconsistency is a continuing frustration for industry and a single overarching coordinator could address this situation.

Thus FSANZ playing a greater role may be **positive for Australia** but less so for New Zealand as they have a single enforcement agency that functions well.

Q39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector? Please select only one item Positive Negative Neutral

Component 2 | Provide for FSANZ to give greater guidance on food standards

The AFGC **supports *in principle*** to provide FSANZ to give greater guidance on food standards.

Elements of component 2 which AFGC supports are:

1. including a statement of intent alongside food standards in the Food Standards Code;

2. resourcing FSANZ to update and maintain industry guidelines;
3. resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims. FSANZ should replicate the work MPI does to support industry in preparing and submitting self-substantiated Health Claims s this would be of benefit in improving the quality of self-notified claims;
4. providing for a determination of what is not a food;
5. providing for a broader basis for interpretation of what constitutes a therapeutic good.

Notwithstanding this, the AFGC considers that any guidance FSANZ provides may be at odds with the views of one or more of the jurisdictions enforcement activities.

The AFGC has proposed that FSANZ take responsibility for the setting of standards and their enforcement in the areas of food composition and food labelling (Chapters 1 and 2 of the FSC, but not food safety and processing (specifically chapter 3). If this proposal were implemented FSANZ would be in a better position to provide advice on the requirements at least these parts of the FSC. This advice should be available in the public domain so that the broader industry might benefit. This advice might also be used to trigger FSANZ to update/review the Code.

Q40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

The AFGC is aware of difficulties with self-substantiated health claims that are made in both Australia and New Zealand markets due to the different manner in which this process is managed in the two countries.

In addition, Australian jurisdictions do not seem to be resourced adequately to review dossiers and provide advice in this area. MPI, on the other hand, has the technical skills at least to review dossiers (but are possibly still under-resourced to handle matters quickly enough for industry needs) but has its own process for determining whether dossiers and associated claims are acceptable.

Differences in resourcing and process make it difficult to use the same claim in both markets which increases the burden on industry because changes to a dossier or changes to advertising may be needed in one market in contrast to the other.

Q41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

The enforcement of the FSC is carried out very effectively in New Zealand by the MPI. Therefore, the AFGC sees no benefit in setting up FSANZ as an enforcement agency in New Zealand. In contrast, if FSANZ to the responsibility for enforcement in Australia for food labelling and food composition standards, a substantial reduction in regulatory uncertainty would result.

The AFGC contends that very effective implementation of the food regulatory system in New Zealand suggest there might be improvements in Australia if FSANZ was not only given responsibility for enforcement for some aspects of the FSC, but also portfolio responsibility for FSANZ could move from the Department of Health and Ageing to the Department of Agriculture Water and the Environment.

Recommendation 12

The AFGC recommends that the Administrative Orders be amended to move responsibility for FSANZ from the Department of Health to the Department of Agriculture Water and the Environment.

Q42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Component 3 | Position FSANZ to take on an enforcement role

As stated earlier in this submission, the AFGC considers FSANZ taking on an enforcement role in the enforcement of Chapters 1 and 2 of the FSC would be very positive for the industry, and indeed other sectors. This should, however, **only apply to Australia**, and not in New Zealand. This would enhance FSANZ's role in providing guidance about food standards. Simply put, if FSANZ was to be the sole enforcement agency in Australia for Chapters 1 and 2 there is no reason why it could not provide comprehensive interpretive advice.

The lack of interpretive advice regarding the intent of the FSC by FSANZ has been a hoary issue for many years. The constraint on FSANZ is derived from the legislative framework and the enforcement roles of the States and Territories. FSANZ did establish a service around 10 years ago to provide interpretive advice, but their internal processes which included consulting the States and Territories were so slow that industry found it of little use. The service was therefore discontinued.

The reality is that under the current arrangements the States and Territories cannot give up their ultimate legislated responsibility of enforcing their own regulations, and so determining what constitutes compliance and what does not.

Without a complete redesign of the system and its legislative arrangements, the AFGC considers it unlikely that the issue of inconsistency in implementation and enforcement of standards will be successfully addressed. Giving FSANZ a greater role in standard-setting and enforcement would go a long way to increasing consistency of enforcement of standards.

Q43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

The AFGC does not possess any details of costs in this area.

Q44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector? Please select only one item Positive Negative Neutral

Component 4 | Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage

The AFGC does **not** support FSANZ speaking on behalf of both Australia and New Zealand to the international community. This would represent a negative outcome for both countries. The AFGC sees real advantages in having two strong coordinated voices in the many trade and regulatory negotiations which take place. It is true that Australia and New Zealand may not be precisely aligned in all instances but two voices 90 per cent in agreement are likely to be more influential that a single voice.

An area which benefits considerably from having two voices on the international stage is the development and adoption of international standards. The AFGC agrees that FSANZ should be able to choose to adopt international standards such as those in the *Codex Alimentarius*, and this should follow a streamlined consultative process. FSANZ should be required to justify why it does not accept those standards, which should be based on sound technical reasons.

Adoption of such standards should not be automatic and consultation with industry and other stakeholders should still occur. This helps ensure standards are fit for purpose within the Australian and New Zealand context.

Q45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

The AFGC does **not** support Option 3 in its entirety but has support for some components. The benefits and cost are discussed specifically with regards to those issues.

Q46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

The AFGC considers that **none** of the functions in Option 3 lend themselves well to cost recovery. They all have a very strong element of public good and negligible opportunity to capture an exclusive commercial benefit.

Q47 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not

The AFGC is **disappointed** that the reform options presented in the draft RIS do **not** align with the draft Aspiration for the Food Regulatory System.

Whereas the draft RIS recognises the importance of a regulatory system which supports a competitive and innovative food industry, the draft Aspirations barely mention the food industry. It is both indicative, and an insight into, the mindset of the bureaucracies responsible for administering the food regulations across Australia. The document seems to suggest that the Food Regulatory System is a thing of worth in its own right, rather than being a policy tool of government designed to guide, and work in partnership with

industry to ensure consumers have a wide range of food products which are safe, nutritious, affordable, accessible, and culturally diverse from which to construct healthy diets.

The AFGC considers that aspirations for the food regulatory system should be focused on creating a food regulatory environment, conducive to the growth and profitability of the sector through a combination of appropriate prioritisation of objectives of the food regulatory system, reiterating some key operating principles around graded evidence and proportionate responses, highlighting the opportunities new smart device technologies offer for information gathering and dissemination, and proposing regulatory mechanisms facilitating export.

The AFGC considers that aspirations for the food regulation system and reforms which may flow from them must be tempered by practicalities. Specifically, food regulation cannot be the universal panacea to all of the pressing societal problems which may be associated to a lesser or greater extent to the food system such as sustainability, animal welfare and even non-communicable diseases.

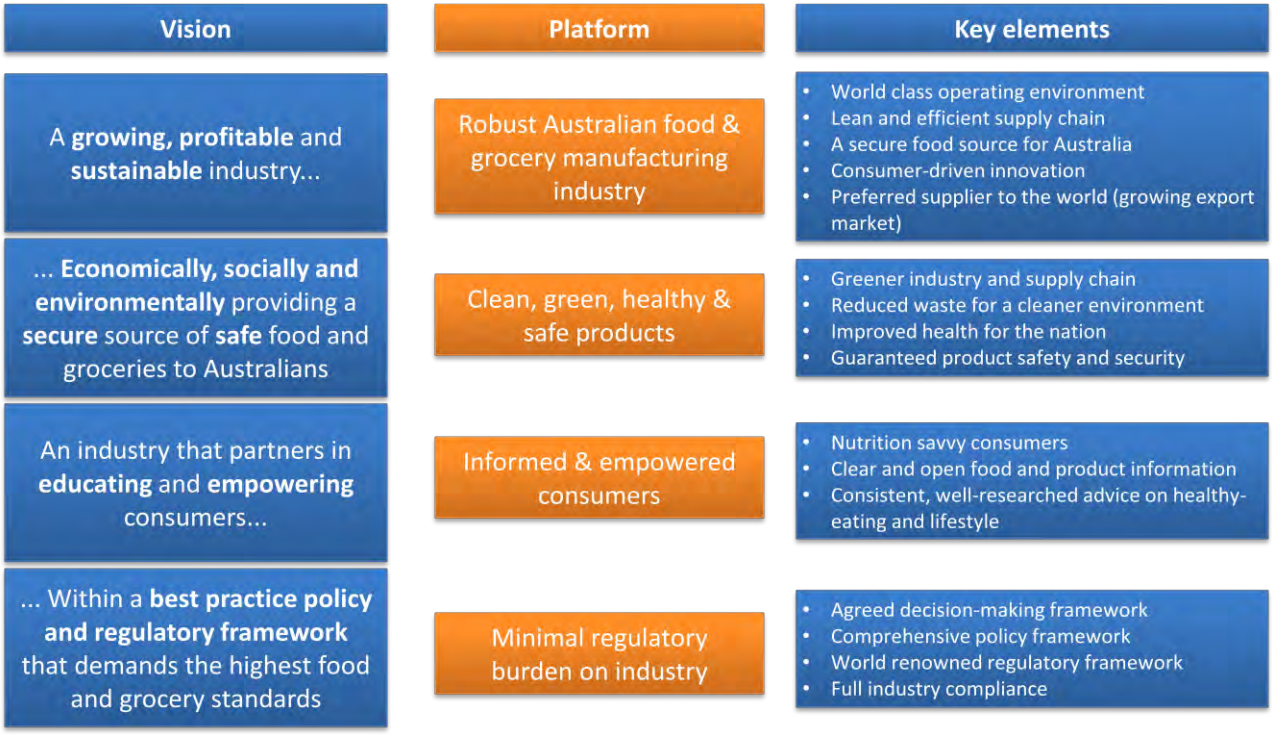
The AFGC considers the food regulatory system should focus primarily on food as consumed product and its direct impact on the nutrition, physiology and health of individuals when consumed. Other regulatory frameworks or policy instruments are better placed to address other issues of community concern. Governments and other stakeholders must recognise the value of specialist regulatory agencies limited in scope but highly effective in delivering regulatory objectives efficiently and appropriately.

The AFGC developed aspirations for the food industry in response to a previous Government initiative to develop a National Food Plan. The AFGC presented a ‘vision’ for the food and grocery manufacturing sector which is reproduced below (**Figure 2**) . Food regulation is viewed as integral to the success of the sector reflecting the alignment, at least as industry views it, of industry’s aspiration for the food sector with that of Government.

Recommendation 13

The AFGC recommends that the draft Aspirations for the Food Regulatory Systems document be amended to reflect that the Food Regulatory System should be supportive of a vibrant, innovative, profitable domestic food manufacturing industries in Australia and New Zealand.

Figure 2. A Vision for the Food and Grocery Manufacturing Sector



Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 14:50:05**

About you

What is your name?

Name:
Melissa Hodd

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Foodstuffs NZ Ltd

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Foodstuffs is a group of retailer owned co-operatives operating in the supermarket and grocery industry. Each of our retail stores is owner-operated by a member. Our retail brands are New World, PAK'nSAVE, Four Square and On-the-Spot. The 200+ New World and PAK'nSAVE stores are supermarkets. The 200+ Four Square stores vary in size from superettes to small supermarkets, while On-the-Spot is a convenience store format.

Like other food retailers, Foodstuffs has a private label or own brand offering, with the main brands being Pams, Pams Finest, and Value.

Foodstuffs also operates wholesale businesses (Gilmours and Trents) which wholesale groceries into the non-member trade.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The consultation document appears to correctly identify the main problems.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Food waste is greater than ideal but these issues are more specific to each country as they require interfaces with other regulatory agencies and players e.g. Ministry for the environment, local government who provide waste collection infrastructure, local industry and product stewardship groups. We don't think FSANZ is the right agency to deal with food sustainability issues in New Zealand.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The system ain't broke, but it could be improved.

We appreciate that FSANZ operates on an evidence-based approach and that it has very good consultative processes which ensures that industry has good opportunities to participate and its views can be heard.

On the other hand, we appreciate that the current approach is rather bureaucratic, inflexible and slow.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Innovation is slowed down, and it takes longer to bring new products/technologies to market, and this is a drag on economic productivity.

Current methods of providing consumer information, predominantly on pack, are expensive and time consuming to change.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

At a sector level, the cost of slowed innovation and productivity are likely to be significant but we are not able to quantify these costs .

Both brandowners and customers will suffer opportunity cost - the loss of the better outcomes that might have been achieved with an improved regulatory system.

The resources applied to the current review would be wasted.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

We support the proposal to clarify that s 3 of the Act encapsulates both acute and long-term health elements.

We agree that the wording in s 3 and s 18 should be aligned to be consistent.

We agree the objectives of FSANZ should be expanded to recognise trade as a core goal.

We agree it would be useful for the Act to set out criteria for Food Ministers to request a review of a draft regulatory measure.

We do not agree the objectives should be expanded to include food sustainability, unless this relates specifically to the economic sustainability of the sector rather than environmental sustainability. In New Zealand, other agencies have responsibility for this and expanding FSANZ's remit in this area would create duplication, and potentially conflict.

We agree that the Act should include an objective of giving recognition to indigenous culture and expertise.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The economic sustainability of the industry only.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

This is already happening largely driven by industry itself but with some innovation funding from government.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

In New Zealand, Maori have significant interests in the farming, fishing, and value-added (manufacturing) food sectors. Their unique approach and use of traditional foods and practices expands and enhances the food options that can be presented to consumers. It grows the sector, and provides richness and diversity in food product offerings.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

We support a more nuanced approach to food regulation based on risk. Different foods, production methods, and processing technologies present different levels of risk and an risk-based approach would be more fit-for-purpose. It would mean that lower risk proposals can be progressed more quickly and this would speed up innovation.

We support greater use of guidelines and codes of practice.

We support expanded use of the process for minor variations.

While we do not support automatic adoption of new standards from selected international regulatory systems, because its desirable to apply local context, but we agree that such standards could be used as a "starting point" for consultation. The interests of indigenous populations also needs to be factored in as these are unique.

We have some concerns around the extent of self-substantiation which might be adopted as we see potential for this opportunity to be abused. However self-substantiation could play a bigger role if the necessary safeguards are in place.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Potentially for minor matters. Matters that are controversial or have significant industry impact should continue to be decided by elected representatives.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Guidance is generally useful and should be provided whenever new Standards are introduced or changed.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We can understand brand-owners' desire to be able to develop new products and technologies freed of the current regulatory restraints, however we have significant reservations about the concept.

If a risk-based regime is adopted, and correctly calibrated, the sandbox approach should be redundant - the barriers to lower risk innovations are removed and the appropriate "safeguards" are applied in cases of higher risk. The proposal suggests applicants would have to incorporate appropriate safeguards to insulate the market from risk - but who decides whether the safeguards are adequate and on what basis? Who takes accountability when things go wrong?

Additionally, we believe it is important that all market participants operate within the same rules and have the same opportunities. The sandbox concept implies preferential treatment for some market participants and this may give these parties an unfair competitive advantage as a result.

We note that the concept is novel and appears to have no international precedent in a food regulation context. We would prefer to see the concept tested elsewhere before being adopted locally.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We have reservations about the use of regulatory sandboxes. We would like to see the approach successfully trialed in other jurisdictions before being considered for use here.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

We see some value in some aspects of this component.

Conceptually resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards has merit in the sense it might avoid continual incremental change that leads to frequent labelling changes at significant cost to industry. However this approach probably raises more problems that it solves - due to the size and complexity of Food Standard Code it would take an enormous amount of resource and a large amount of time. This would slow innovation, which would be "on-hold" until the whole Code was finalised. It is unlikely that industry would have the resources to commit to such a large scale exercise and it would mean the work-load for FSANZ would be "lumpy" periods of immense workload and others with very little to do - this will pose issues around resourcing. On balance, while the idea has appeal we can't see it being practical to implement and their would be unintended consequences.

A better approach might be to adopt a hybrid approach and "package" a buddle of labelling changes together so that multiple labelling changes can be made in

one sweep.

We have reservation about FSANZ coordinating food safety research on a bi-national basis as New Zealand has its own approach here and is likely to have different priorities. Whether FSANZ should assume this responsibility for the Australian market would be a question for Australian stakeholders.

Our position would be the same in regard to the concept of FSANZ acting as the guardian of key food safety databases. We also note that GS1 is increasingly providing this function in New Zealand with industry support.

MPI already develop consumer facing education materials for food safety in the New Zealand market, but we agree FSANZ could have a role in producing such materials for food standards which are trans-Tasman based.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Not for New Zealand. Whether FSANZ should do this for the Australian market is a question for Australian stakeholders.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Cross-agency intelligence sharing should be encouraged, however we wouldn't necessarily support FSANZ being the engine of food safety intelligence in New Zealand. Closer collaboration between FSANZ and MPI in this respect would be endorsed.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Potentially. It would depend on what information is available, its utility for us, the costs involved in purchasing it, and whether it could be obtained from other sources at lower cost.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Improvements to governance models are always supported.

While we would support a smaller, skills-based Board, we would like to see continued representation from New Zealand, albeit with the requirement that the representative(s) have the pre-requisite skills.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

If risks -based approach is not correctly calibrated, there could be failure with potentially significant consequences for consumers and or industry. A precautionary approach to risk is needed.

Lack of representation in governance arrangements might result in Australian interests taking priority over a trans-Tasman perspective at the cost to the New Zealand industry.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

SMEs would be disadvantaged relative to large firms, particularly multinationals.

SMEs are often a driver of innovation and high cost structures could deter this.

Ultimately there could be less competition in the market and less innovation, if SMEs are not able to thrive and grow.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

As a retailer, we have never made an application to change a food standard, however we regularly participate in public consultation about proposed changes.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The level of resourcing we have to commit to this type of engagement.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

We don't see any need for FSANZ to coordinate food incident responses in NZ as this function is adequately managed by MPI.

We see merit in FSANZ providing greater guidance on food standards.

The question of FSANZ's involvement in enforcing food standards in New Zealand would be a matter for the New Zealand government to consider.

In regard to international representation, we prefer that the New Zealand government represents New Zealand's interests independently.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The costs are significant in terms of labour and credit stock, however we are unable to fully quantify them.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We don't see any need for FSANZ to coordinate food incident responses in NZ as this function is adequately managed by MPI.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Guidance is always welcome and can improve certainty and reduce compliance costs.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

This would be a question for the New Zealand government to determine. Foodstuffs would be neutral on this question.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

FSANZ may bring better subject matter knowledge to the role but aside from that, and assuming common interpretation of compliance requirements and appropriate competency, it shouldn't really matter which agency undertakes enforcement activity. There can be some advantage in separating policy and enforcement roles to increase the independence of the respective roles.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We prefer that the New Zealand government continues to directly represent New Zealand's interests in international contexts.

There could be differences of opinion between Australia and New Zealand and if FSANZ were to represent both countries it is possible that Australian interests, having the larger economy, would dominate the minority partner.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Yes. Option 2 would be our preferred option, notwithstanding our reservations about regulatory sandboxes.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

In order of priority:
1. "Package" multiple food labelling changes together to reduce re-labelling costs.
2. Clarify objectives and functions and reflect these in the Act.
3. Facilitate risk-based approaches to developing or amending food regulatory measures.
4. Provide greater guidance on food standards
5. Streamline FSANZ's governance and operations

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Yes.

Option 2 is preferred because it would deliver on the aspirations with a smaller amount of change than Option 3, and less risk to New Zealand as the smaller economy in the partnership.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 15:16:54**

About you

What is your name?

Name:
Fiona Fleming

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
The a2 Milk Company Limited

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The a2 Milk Company Limited is a dual listed NZX and ASX 50 public listed company that commercialises intellectual property relating to A1 protein-free milk that is sold under the a2 and a2 Milk brands, as well as the milk and related products such as infant formula.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

a2MC does not support this option as it does not optimally support a strong, resilient and agile regulatory system and allows only a limited degree of risk-proportionality when progressing standards work, compared to option 2.

a2MC agrees with other stakeholders identified in the RIS, that this option would represent a missed opportunity to ensure that the Act remains fit-for-purpose and is adequately future-focused.

There are opportunities to revise the Act so it remains fit-for-purpose and appropriately future-focused. The ability to create a more agile standard-setting process, that proportionately focusses on risk and encourages innovation is highly desirable.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

a2MC supports clarifying and reinforcing the objectives and functions of FSANZ as outlined in the FSANZ Act. With the goal of strengthening the existing data-driven, intelligence led decision-making process, and enhancing the level of engagement and integration between stakeholders within the food regulatory system.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

a2MC notes that FSANZ already undertakes a risk-based approach to food standards development, but supports further considerations as follows:

• Provide for the Forum to delegate decision-making to FSANZ for more low risk, technical amendments and editorial changes
• Use of international standards and risk assessments from approved jurisdictions.
• Enable FSANZ to adopt international standards, where supported by a credible risk assessment including dietary patterns and industry practices relevant to the Trans-Tasman system.
• new pre-market pathways (via automatic or minimal check options) to expedite low-risk amendments to food standards or a post-market focus for foods that present exceptionally low risk to consumers based on clear principles and guidelines.
• Where appropriate, self-substantiation pathways

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

a2MC supports concept/policy of Food Ministers' delegating to the FSANZ Board for decision-making for specific standards (e.g., Applications which have minimal, or no risk assessments needed). Currently the Australian Pesticides and Veterinary Medicines Authority (APVMA) can change the Maximum Residue Limits standard of the Food Standards Code directly, without oversight of the Food Ministers' Meeting.
Alternatively, would it better to have some kind of multidisciplinary panel so the Board itself can focus on compliance and running the organisation.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

a2MC supports this as a concept but there would need to be more information and education about how this would operate and an Australia wide acceptance of the framework and outcomes by state/territory jurisdictions.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

a2MC notes that this is already a function that FSANZ performs.

a2MC supports an expansive repository of food safety or food composition information through several key activities.
For example:
• more timely, holistic, and regular reviews of food standards.
• Equipping FSANZ to develop strategic relationships with New Zealand food safety research entities
• FSANZ as the guardian of key food safety databases
• FSANZ to collate and create consumer-facing food safety education materials

While FSANZ has a role, they should not be the ultimate source of all food safety information.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

a2MC notes that this is already a function that FSANZ performs but sees additional value in the following:
• FSANZ and the Food Ministers' undertaking periodic joint agenda-setting to agree on the proposals on which to focus. This would free up valuable FSANZ resources to not focus on generating standards that may not be necessary or effective to ensure PH&S.
• FSANZ could further partner with other government to make intelligence-led decisions and reduce duplication of efforts.
• FSANZ's databank could be available to inform high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

These are as follows:
• Difficulty or no knowledge how to engage and seek approvals.
• The current FSANZ Application Handbook is not user friendly.
• Navigating the Code is not straight forward.
• Timely consideration of applications
• Extensive risk assessment data needed to support applications.
• Time permitted to respond to consultations is often quite short and does not take into consideration the time required to collate information needed to provide feedback.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The current system is working well and there is no real need to change.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

a2MC strongly endorses FSANZ providing greater guidance on food standards.
This is because:
• There is currently inconsistency with interpretation of the Food Code due to the differing views of regulators and/or regulators not willing to provide interpretative advice. With FSANZ being the ‘one source of guidance’, there is the ability to provide a consistent approach. This would allow greater clarity for those businesses that operate in all, or many, jurisdictions. At the moment, there is inconsistent interpretation by some regulators or a lack of guidance which makes it difficult for a business to understand whether it is operating within the law or not. For example:

o One regulator stating a provision of the Food Code means X whereas the regulator in a different State believing it means Y. The effect being that the product is at risk of non-compliance in one State but not in the other. Given it is the same law, this seems absurd and creates unfair barriers to trade.

o Another scenario is where the New Zealand regulator considers X view and there is uncertainty as to whether this same view is taken by Australian regulators – ISFR will also not assist with administering guidance to allow for a consistent approach. As such, there is no real answer for a company around the specific interpretation which creates uncertainty. There is no clear answer for the company in question.

• It is commonly understood that the Implementation Subcommittee for Food Regulation (ISFR) can be used to facilitate common approaches to implement foods standards through the development of guidelines. However, a2MC question whether this current process works and believe that it is likely FSANZ is a better body for providing these guidelines / interpretative advice (in consultation with other regulatory bodies / key stakeholders). FSANZ are better placed to understand the context and purpose of the laws as well as the scientific technicalities.

• FSANZ is the body that drafts the Food Code therefore understands the reasoning behind why the standards have been drafted. The context is therefore likely

understood more within FSANZ than other regulatory bodies which then assists with the correct interpretation.

However, risks also arise that would need to be addressed:
• In providing interpretative advice, FSANZ would need to ensure it is consistent with CODEX interpretations/guidelines in this regard.

• With respect, FSANZ sometimes may take a 'black and white' interpretation to the law and in many cases interpretation is wider than just the letters on the paper. Interpretation should be considered from both a technical perspective, purpose of the provision, context of the relevant law as a whole, the legislative history (ie. what is the provision trying to ascertain or 'fix') and the wider context (including overseas laws / guidelines / WHO / Codex etc). FSANZ would need to ensure that it interprets laws in a wider rather than narrow view.

Other Comments
• It would be beneficial if FSANZ released a 'commonly asked questions' interpretative guidance document each year – this could address the most commonly asked questions, and the resulting answers. This could be similar to the FSANZ Novel Food Record – it can be updated if views change but provides one 'source of truth' for industry to at least look to for general guidance. Another option is to update the FSANZ User Guides on the FSANZ website and include information on the commonly asked questions.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

a2MC's position is that FSANZ should focus on delivering its core business effectively before broadening its remit and risk diluting the organisation's impact. FSANZ's credibility and trusted status as a risk-and science-based standards setting body could be compromised if it took on additional functions, such as regulatory roles.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

a2MC believes that FSANZ is already an active player on the international stage through its engagement with CODEX, and its relationships with WHO, FAO, US authorities, etc. Each senior professional within FSANZ should have a network of local and international experts and engage with them on a regular basis.

a2MC supports clarifying legislation so FSANZ can extend Australia and New Zealand's influence on the international stage, to build better strategic relationships with comparable international regulators to either share assessments or standards or make these together for mutual benefit as part of the harmonisation process. Ultimately greater harmonisation with international standards will create new or strengthened trade channels which will benefit Australia and New Zealand businesses.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Yes.

a2MC re-iterates its support for the following:
• FSANZ to provide clear guidelines and interpretation of standards in the Code
• The FSANZ act should provide for minimum effective regulation
• Level playing field for the domestic food industry compared to international industry
• More user-friendly processes for making applications to FSANZ for all industry sectors
• No further extension of the cost-recovered arrangements so as to aid industry innovation and keep costs to a minimum.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

a2MC supports option 2 with components 1,2, 5 and 6 as key priorities. This would provide:
• A modern, fit-for-purpose regulatory framework
• A strong, resilient and agile food regulation system
• More flexible and risk-proportionate approaches
• Expanding the objectives to explicitly reference trade as a core objective of FSANZ (although subordinate to public health objectives) would better reflect the importance of a competitive domestic and export food industry for both Australia and New Zealand.
• a significantly new approach to developing or varying food standards or introducing foods to the market via other mechanisms, noting that changes would require some operational adaptations for both FSANZ and industry.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

a2MC agrees that the reform options presented in the draft Regulatory Impact Statement align with all the draft Aspirations for the Food Regulatory System.

a2MC supports Option 2 as it aligns with:
• Responsive, transparent decision-making
• Proportionate and effective responses to policy and compliance issues
• Continuous improvement of the system

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 15:22:20**

About you

What is your name?

Name:
Melanie McPherson

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Unilever

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
NSW

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Unilever ANZ supports the Australian Food & Grocery Council submission, especially highlighting the lack of a single regulatory authority and lack of clarity around scope.

Unilever ANZ supports the Australian Food & Grocery Council Recommendations, particularly Recommendation 4 that the FSANZ Act be amended to restrict FSANZ's regulatory scope to dealings with food as a consumed product encompassing and limited to the food safety aspects of food processing and handling, and to food compositional requirements and food labelling requirements.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Unilever ANZ has no comment on examples or issues regarding food sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Unilever ANZ is not currently aware of issues in the regulatory system impacting indigenous culture and food expertise.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Unilever ANZ has no available data on the cost of delays when utilising the current process.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Unilever ANZ sees the primary risk under Option 1 is the lack of responsiveness from the food regulation system. The current system does not support innovations for new ingredients, new processing technologies or evolving consumer demands, and is not set up effectively enough to support international trade.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Review of the Act is an opportunity to bring positive changes and impacts for all stakeholders.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic

and social impacts).

Please provide your response in the box. :

Unilever ANZ has a strong focus on sustainability at the core of our Compass business strategy. However, we do not believe that sustainability needs to be a focus of FSANZ. Other Government agencies already provide sufficient oversight on sustainability.

Sustainability claims are already covered by the Australian Competition and Consumer Commission. This should not be the remit of FSANZ as there is no additional advantage to expanding FSANZ role in this area.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

There are numerous economic opportunities available with a Government & industry focus on sustainability, such as development of new technologies for low carbon energy generation, new circular economy models for processing food & packaging waste, use of new technology in agriculture to reduce water usage and improve soil quality.

However, this should not be the remit of FSANZ as there is no additional advantage to expanding FSANZ role in this area.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Unilever ANZ supports the use of indigenous ingredients in the food supply.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

It would generally be expected that bringing traditional products to a broader market would have economic benefits for indigenous businesses and communities.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Unilever ANZ contributed to, and supports, the Australian Food & Grocery Council comments regarding the delegation of decision-making to the FSANZ Board.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Unilever ANZ supports the proposal for FSANZ to take on the role of enforcement, for the Chapter 1 and Chapter 2 components of the ANZ Food Standards Code. As a flow-on from this, it would be appropriate for FSANZ to develop guides for the regulations set out in those Chapters.

Unilever ANZ supports, in principle, the development of codes of practice by FSANZ, however these should only be developed where there is a clear need, and in consultation with the food industry stakeholders.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

Unilever ANZ fully supports the proposal for FSANZ to have the statutory ability to recognise and adopt international risk assessments. The cost to business, to provide the data, combined with the cost to FSANZ to assess that data, will be dependent on the particular risk assessment and substance or technology being assessed. These costs are highly variable but can, on occasion, be excessive.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

No comment.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

No comment.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

There is a potential for this to be positive, however more details are required to arrive at a final view.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

No. These activities are essential to public health and safety and therefore should be publicly funded.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

No comment

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

No comment.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Unilever ANZ agrees with the assessment of costs and benefits of Option 2 presented in the RIS and is generally supportive of this component.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No comment.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

No. Unilever ANZ sees other activities as essential to public health and safety and therefore should be publicly funded.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

No comment.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Unilever ANZ has not made an application to FSANZ to change Food Standards in the past 5 years. We therefore infrequently engage with the system to change food Standards.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

No comment.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Unilever ANZ has no comment at this time. Engagement with the system depends on new innovations our business plans to bring to market. More details would need to be available, to assess the impact on engagement with the new pathways.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Unilever ANZ does not support the proposals to change food recall processes. Recalls need to be managed at a local level and the current system meets the aims and objectives of timely food recalls.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Food recall costs are variable. They will depend on factors such as whether the stock is still held by a company, or whether a full consumer facing recall is required. The costs will then be impacted by the unit cost of the product, the extent of distribution across states in Australia, and whether an international recall is required.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

Unilever ANZ would support an increase in the role of FSANZ for food recalls in Australia due to the inconsistent approach taken by various jurisdictions.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

While Unilever ANZ has no specific data on hand, this is a regular issue for our international brands. As well as direct importation of finished products, Unilever ANZ also looks to share products and labels with other global business units, on some occasions. These costs will include -

• Additional staff time to assess and manage issues.
• Cost of stickers and labour to over-sticker for imported products.
• Loss of sales where new ingredients have been assessed and approved as safe for consumption; but have not yet been assessed and approved in ANZ.
• Loss of sales of new products, where the costs are prohibitive.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

The value of FSANZ taking on enforcement activities is not of equal value to New Zealand, as for Australia. NZ already has one agency, MPI, conducting their enforcement activities. This works well and should not be altered.

The value for moving enforcement activities to FSANZ would be of greatest value, and should only be moved to FSANZ, for Australia.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

N/A

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

N/A

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Australia and New Zealand are two separate, sovereign nations and therefore must have the ability to speak separately.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Unilever ANZ has no comment at this time.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Unilever ANZ does not believe that any of the functions in Option 3 should be supported through cost recovery. All activities have very strong elements of public benefit with negligible opportunity to capture an exclusive commercial benefit by food manufacturers.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Unilever ANZ does not believe that the reform options align with the Aspirations proposal. There is little mention of the food industry in the draft Aspirations considerations. There cannot be a healthy, responsive food industry without full consideration of food manufacturing.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Unilever ANZ considers that to achieve a modern, agile food regulatory system that is fit for purpose, that all 6 of the components of Option 2, need to be developed and adopted. together.

A patchwork approach will not allow for a modern system to fully evolve.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Unilever ANZ does not believe that the reform options align with the Aspirations proposal. There is little mention of the food industry in the draft Aspirations considerations. There cannot be a healthy, responsive food industry without full consideration of food manufacturing.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

No comment.

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 15:24:22**

About you

What is your name?

Name:
Professor C Murray Skeaff

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
General public

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:

Not applicable- Responding as an individual

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The increased penetration of highly manufactured and ultra-processed foods is unsustainable for planetary and human health. An immediate barrier is the dominance of low nutritional quality ultra-processed foods high in sugars, sodium, saturated fats, but the larger and more fundamental problem is rooted in a framework and belief that the betterment of public health that can be achieved through the food system depends on the increased production and consumption of manufactured and ‘high-value’ foods – much of the regulatory focus on innovation is geared to foster and promote this goal. These manufactured foods are usually less sustainable - particularly so when the definition of sustainability, often limited to environmental measures, encompasses health and social equity. The view that reducing the excessive burden of diet-related chronic disease lies in designing and manufacturing 'value added', 'high value', 'functional healthy foods' is an illusory promise and is unsupported by fair-minded examination of the objective scientific evidence. There are risks to public health in a food regulation system which shifts the food supply towards more complex ‘value-added’ foods. History suggests some scepticism is needed in the tacit assumption, which dominates the Regulatory Impact Statement, that industry and technological innovation is the key and promise to ever greater advances in food safety and public health and to a better and modern food system. The reform of the Act must “begin with the question: whom does our food system ultimately serve, and for what purpose?”. The weight of scientific evidence is that nutritional approaches to reducing the burden of disease are simple and, in general, cost-effective and sustainable involving whole and less processed foods. Food does not need to be designed, manufacturer, complex or costly for a healthy diet. The review of the FSANZ Act is biased heavily towards the dominant and conventional view that the food system exists primarily as an engine of economic growth – how else to interpret that

the main ‘driver’ for economic recovery from the pandemic of COVID-19 is the food system and this depends on ‘modernisation’. The myth that human health will be improved by more unsustainable manufactured foods is driven primarily by the worldview that the food system exists primarily as a commodity and the purpose of the food regulatory system is to enable the commodification of the system. There are four purposes to the food system: public health, economic, planetary health, and social cohesion. Currently, the food regulation system is tailored primarily to achieve economic outcomes. The review of the FSANZ Act needs to identify the critical outcomes for health, economy, environment and society then create a regulatory system that harmonizes and achieves the optimal outcomes for all elements of the foods system. This will be regulatory excellence and a modern, future focused regulatory system because it will be based on the totality of understanding about the food system and society. The current review focuses primarily on enabling economic gain and efficiency, a distinctly old world, narrow, and uninformed worldview.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Partnership implies a partnership, not a token consultation after the framework has been decided. M■ori voices have commented that the review of the Act has not been in partnership with M■ori . Consultation with the Crown is not consultation with M■ori.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The definition of sustainability needs to reflect the best of human knowledge and understanding. The most important goal is a sustainable food system. Whatever the definition, all outcomes (health, economic, social, environmental) that are affected by the food system need to be harmonised and optimal. To choose one aspect of sustainability or to have one dominate at the expense of others is neither informed by nor responsive to the evidence, and is not modern or future-focused. To quote: "The development of sustainable food systems should not be represented purely as a matter of personal responsibility and consumer choice."1 "Because food systems are a major driver of poor health and environmental degradation, global efforts are urgently needed to collectively transform diets and food production."2
The current food system is unsustainable!! One of the clearest economic indicators is that the direct health costs of overweight and obesity in Australia account for almost 7% of the annual health budget (5.4 billion out of 81.1 billion, 2019-2020). The indirect cost may be several times higher. The regulatory food system contributes to this burden.
1. Health TLP. More than a diet. Lancet Planet Heal. 2019;3(2):e48.
2. Collaborators G 2019 V, Murray CJL, Abbafati C, Abbas KM, Abbasi M, Abbasi-Kangevari M, et al. Five insights from the Global Burden of Disease Study 2019. Lancet. 2020;396(10258):1135–59.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

The question should be about sustainable food systems not just 'sustainability'!

This question reveals the fundamental value framework in which the FSANZ Act review is being undertaken; that is, economic outcomes underpin and are the most meaningful measures of a regulatory food system. Why not ask what health benefits might arise? The current regulatory system, insofar as public health and safety are concerned, deals largely with preventing harm from foodborne illness and chemical hazard. The best estimate (WHO) is that if all risks from foodborne illness and chemical hazards were minimized, 450 death would be prevented annually in New Zealand and Australia. The number of premature, preventable deaths in Australia and New Zealand from diet-related chronic disease exceeds 27000. It seems peculiar - no astounding - that an entire food regulatory system focuses primarily on the causes of 450 deaths, and makes little serious regulatory effort to address the 27000 deaths from diet related chronic disease.

The current food system is unsustainable!! One of the clearest economic indicators is that the direct health costs of overweight and obesity in Australia account for almost 7% of the annual health budget (5.4 billion out of 81.1 billion, 2019-2020). The indirect cost may be several times higher.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Maori need to be in partnership - full stop.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Why is it always about the money? What about health, what about the environment, what about social equity?

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there

other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The dominant theme for modernising the Act is that regulatory activities and standard-setting need to be 'risk-based and proportionate'. Unfortunately, herein lie outdated assumptions and narrowly defined approaches to assessing risk.

If food regulation is to be decided in proportion to risk, it is critical to have a reliable and accurate model to assess risk attributable to the food system. What is risk proportionate? 'Modernising the FSANZ Act' has little detail on how risk needs to be judged (Table 5 p53 is insufficient) so 'risk proportionate' is in the eye of the beholder. The best estimate from the World Health Organisation (FSANZ members were on the Expert Advisory Group) is that foodborne illness and chemical hazards cause 450 death preventable deaths annually in New Zealand and Australia. The number of premature, preventable deaths in Australia and New Zealand from diet-related chronic disease exceeds 27000. 450 versus 27000! The implications of these two extremes is profound. A food regulatory system and food regulations to prevent 450 deaths from foodborne illness and chemical hazards will be quite different to the food regulatory system needed to prevent 27000 deaths from diet-related chronic disease.

The single-minded focus on food safety despite the overwhelming burden of risk from diet-related chronic disease is a paradox of the existing regulatory system and one which modernisation must, but does not currently address; it will require world-leading innovative approaches to resolve. 'Modernising the FSANZ Act' fails woefully to capture this fundamental error in the current system on how risk attributable to the food system is assessed – it is the 'elephant in the room'. With few exceptions in the regulatory impact statement, 'risk proportionate' is judged on conventional risk (i.e. foodborne illness and chemical hazard). When risk is low it is implied that 'risk proportionate' action should be to deregulate, delegate, or streamline processes. But what of risk from diet-related chronic disease, which exceeds conventional risk 60 fold? Why does 'risk proportionate' not include consideration of regulatory processes and actions to reduce the 27000 premature preventable deaths from diet-related chronic disease. The barriers and inefficiencies in developing food regulations and standards (eg labelling, food reformulation, education) that have implications for diet-related chronic disease dwarf those that industry faces. Why not also lower the barriers and improve the efficiency of creating regulations that will improve the quality of the food supply and make it easier for consumers to follow dietary patterns that will have desirable effects on their health? Why should 'modernisation' and de-regulation only apply to those standards that affect economic and commercial outcomes. Modernisation needs to recognise the body of scientific knowledge that has evolved about food, diet, food systems and human health and create 'agile', 'responsive', 'flexible' regulatory processes to respond to the very serious burden of diet-related chronic illness. Regulatory burden applies also to 'public health', it is not limited to industry burden. High regulatory burden is a barrier to introducing and revising standards and regulations that could help consumers to make informed choice and protect public health. Achieving coherence between food safety, public health, and economic vitality of a modern food system is likely to require a tremendous expansion in activities of education and informing consumers. This option needs greater attention in the Regulatory Impact Statement. "A core obstacle to accelerating progress on behavioural risks is the notion of individual agency and the need for governments to let individuals make their own choices. This concept is naive, given that individual choices are influenced by context, education, and availability of alternatives. Governments can and should take action to facilitate healthier choices by rich and poor individuals alike. When there is a major risk to population health, concerted government action through regulation, taxation, and subsidies, drawing lessons from decades of tobacco control, might be required to protect the public's health."1
1. Collaborators G 2019 V, Murray CJL, Abbafati C, Abbas KM, Abbasi M, Abbasi-Kangevari M, et al. Five insights from the Global Burden of Disease Study 2019. Lancet. 2020;396(10258):1135–59.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

It is as though the 'Aspirations for the Food Regulatory System' and 'Modernising the FSANZ Act' are documents from different universes!! Unlike the Aspirations which are more all-encompassing and integrated, acknowledge the range of forces at play, and recognise relevant outcomes for the food system, the major theme/aspiration of the regulatory impact statement is narrowly focused on the commodification of the food system. The impact statement includes words such as

public health and sustainability; however, these are peripheral to and not integral to the options and components. Raising trade to a core objective of the Act is the death knell of public health and food regulation. Who in their right mind would believe that public health outcomes – despite it being the overriding goal of the Act - will ‘get across the line’ when weighed against the outcomes of generating wealth and financial gain. Material outcomes will inevitably win out over public health, non-material, and social benefit - the course of recent human history suggests that to expect otherwise is naïve. The example at the top of page 91 shows the type of decision that would always win out and exemplifies the serious bias in the regulatory impact statement. How is it possible, asks the example, that the cost of unnecessary delays in a 'low risk' product were AUD$10.725 million? This theme runs throughout the regulatory impact statement and is so deeply embedded in the current regulatory system that even those conducting a review of the Act fail to acknowledge it. The theme is encapsulated by 'if it's safe' why not let it into the food system? The need to consider health benefit or other desirable outcomes becomes unimportant and can be largely ignored when a product is ‘safe’. But, what defines ‘safe’ in a sustainable food system? Safety in the food system can no longer be defined solely by toxicological safety when there is unequivocal evidence that elements of the food system account for an enormous burden of disease. The example given on page 91, gives the industry perspective that the product is safe/low risk. Reject a ‘Low risk/safe product with little evidence of health benefit’ vs approve the product immediately and gain ‘AUD$10.725’, which one will always win when it comes to regulatory decisions, regardless of the implications to long-term diet-related health (in this case infant health).
The food industry has an important role in implementing and delivering change. However, companies cannot be allowed to influence and interfere in public policy making or bias the science that underpins this process. While constructive dialogue is necessary, a default seat at the table for private-sector representatives should not be assumed and policy development processes need to be firewalled from vested interests.” 1
1. Branca F, Demaio A, Udomkesmalee E, Baker P, Aguayo VM, Barquera S, et al. A new nutrition manifesto for a new nutrition reality. The Lancet. 2020 Jan 4;395(10217):8–10.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

The review of the Act is so fundamentally skewed in it's framework that it permits virtually little space for reasonable evaluation of aspects of the food system that are not economic. Thus, the high-level and global discourse about sustainable food systems is largely ignored and the 'prompted' questions that define the Public Consultation create a narrow scope of ideas and input into the review. This is not a modern or future-focused approach.

I attach the comments which have been 'forced' into text boxes of the Public Consultation. The comments are brief in the context of the 134 page regulatory impact statement.

Upload any supplementary information here. :
FSANZ Act Review CM Skeaff Submission.pdf was uploaded

Submission from CM Skeaff to the Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement

Comment: The betterment of public health does not depend of food innovation

The increased penetration of highly manufactured and ultra-processed foods is unsustainable for planetary and human health. An immediate barrier is the dominance of low nutritional quality ultra-processed foods high in sugars, sodium, saturated fats, but the larger and more fundamental problem is rooted in a framework and belief that the betterment of public health that can be achieved through the food system depends on the increased production and consumption of manufactured and 'high-value' foods – much of the regulatory focus on innovation is geared to foster and promote this goal. These manufactured foods are usually less sustainable - particularly so when the definition of sustainability, often limited to environmental measures, encompasses health and social equity. The view that reducing the excessive burden of diet-related chronic disease lies in designing and manufacturing 'value added', 'high value', 'functional healthy foods' is an illusory promise and is unsupported by fair-minded examination of the objective scientific evidence. There are risks to public health in a food regulation system which shifts the food supply towards more complex 'value-added' foods. History suggests some scepticism is needed in the tacit assumption, which dominates the Regulatory Impact Statement, that industry and technological innovation is the key and promise to ever greater advances in food safety and public health and to a better and modern food system. The reform of the Act must "begin with the question: whom does our food system ultimately serve, and for what purpose?". The weight of scientific evidence is that nutritional approaches to reducing the burden of disease are simple and, in general, cost-effective and sustainable involving whole and less processed foods. Food does not need to be designed, manufacturer, complex or costly for a healthy diet. The review of the FSANZ Act is biased heavily towards the dominant and conventional view that the food system exists primarily as an engine of economic growth – how else to interpret that the main 'driver' for economic recovery from the pandemic of COVID-19 is the food system and this depends on 'modernisation'. The myth that human health will be improved by more unsustainable manufactured foods is driven primarily by the worldview that the food system exists primarily as a commodity and the purpose of the food regulatory system is to enable the commodification of the system. There are four purposes to the food system: public health, economic, planetary health, and social cohesion. Currently, the food regulation system is tailored primarily to achieve economic outcomes. The review of the FSANZ Act needs to identify the critical outcomes for health, economy, environment and society then create a regulatory system that harmonizes and achieves the optimal outcomes for all elements of the foods system. This will be regulatory excellence and a modern, future

focused regulatory system because it will be based on the totality of understanding about the food system and society. The current review focuses primarily on enabling economic gain and efficiency, a distinctly old world, narrow, and uninformed worldview.

Comment: Need for partnership with Māori

Partnership implies a partnership, not a token consultation after the framework has been decided. Māori voices have commented that the review of the Act has not been in partnership with Māori . Consultation with the Crown is not consultation with Māori.

Comment: Evidence informed definition of a sustainable food system

The definition of sustainability needs to reflect the best of human knowledge and understanding. The most important goal is a sustainable food system. Whatever the definition, all outcomes (health, economic, social, environmental) that are affected by the food system need to be harmonised and optimal. To choose one aspect of sustainability or to have one dominate at the expense of others is neither informed by nor responsive to the evidence, and is not modern or future-focused. To quote: “The development of sustainable food systems should not be represented purely as a matter of personal responsibility and consumer choice.”[1] “Because food systems are a major driver of poor health and environmental degradation, global efforts are urgently needed to collectively transform diets and food production.”[2]

The current food system is unsustainable!! One of the clearest economic indicators is that the direct health costs of overweight and obesity in Australia account for almost 7% of the annual health budget (5.4 billion out of 81.1 billion, 2019-2020). The indirect cost may be several times higher. The regulatory food system contributes to this burden.

1. Health TLP. More than a diet. Lancet Planet Heal. 2019;3(2):e48.
2. Collaborators G 2019 V, Murray CJL, Abbafati C, Abbas KM, Abbasi M, Abbasi-Kangevari M, et al. Five insights from the Global Burden of Disease Study 2019. Lancet. 2020;396(10258):1135–59.

Comment: Evidence informed definition of a sustainable food system

The question should be about sustainable food systems not just 'sustainability'!

This question reveals the fundamental value framework in which the FSANZ Act review is being undertaken; the value of sustainability is measured primarily by the economic outcome and it is this outcome that is the most meaningful measure of a high quality regulatory food system. Why not ask what health benefits might arise from sustainable approaches? The current regulatory system, insofar as public health and safety are concerned, deals largely with preventing harm from foodborne illness and chemical hazard. The best estimate (WHO)

is that if all risks from foodborne illness and chemical hazards were minimized, 450 death would be prevented annually in New Zealand and Australia. The number of premature, preventable deaths in Australia and New Zealand from diet-related chronic disease exceeds 27000. It seems peculiar - no astounding - that an entire food regulatory system focuses primarily on the causes of 450 deaths, and makes little serious regulatory effort to address the 27000 deaths from diet related chronic disease.

Comment: Food regulation processes and actions that are proportionate to risk – defining risk

The dominant theme for modernising the Act is that regulatory activities and standard-setting need to be 'risk-based and proportionate'. Unfortunately, herein lie outdated assumptions and narrowly defined approaches to assessing risk.

If food regulation is to be decided in proportion to risk, it is critical to have a reliable and accurate model to assess risk attributable to the food system. What is risk proportionate? 'Modernising the FSANZ Act' has little detail on how risk needs to be judged (Table 5 p53 is insufficient) so 'risk proportionate' is in the eye of the beholder. The best estimate from the World Health Organisation (FSANZ members were on the Expert Advisory Group) is that foodborne illness and chemical hazards cause 450 death preventable deaths annually in New Zealand and Australia. The number of premature, preventable deaths in Australia and New Zealand from diet-related chronic disease exceeds 27000. 450 versus 27000! The implications of these two extremes is profound. A food regulatory system and food regulations to prevent 450 deaths from foodborne illness and chemical hazards will be quite different to the food regulatory system needed to prevent 27000 deaths from diet-related chronic disease.

The single-minded focus on food safety despite the overwhelming burden of risk from diet-related chronic disease is a paradox of the existing regulatory system and one which modernisation must, but does not currently address; it will require world-leading innovative approaches to resolve. 'Modernising the FSANZ Act' fails woefully to capture this fundamental error in the current system on how risk attributable to the food system is assessed – it is the 'elephant in the room'. With few exceptions in the regulatory impact statement, 'risk proportionate' is judged on conventional risk (i.e. foodborne illness and chemical hazard). When risk is low it is implied that 'risk proportionate' action should be to deregulate, delegate, or streamline processes. But what of risk from diet-related chronic disease, which exceeds conventional risk 60 fold? Why does 'risk proportionate' not include consideration of regulatory processes and actions to reduce the 27000 premature

preventable deaths from diet-related chronic disease. The barriers and inefficiencies in developing food regulations and standards (eg labelling, food reformulation, education) that have implications for diet-related chronic disease dwarf those that industry faces. Why not also lower the barriers and improve the efficiency of creating regulations that will improve the quality of the food supply and make it easier for consumers to follow dietary patterns that will have desirable effects on their health? Why should 'modernisation' and de-regulation only apply to those standards that affect economic and commercial outcomes. Modernisation needs to recognise the body of scientific knowledge that has evolved about food, diet, food systems and human health and create 'agile', 'responsive', 'flexible' regulatory processes to respond to the very serious burden of diet-related chronic illness. Regulatory burden applies also to 'public health', it is not limited to industry burden. High regulatory burden is a barrier to introducing and revising standards and regulations that could help consumers to make informed choice and protect public health. Achieving coherence between food safety, public health, and economic vitality of a modern food system is likely to require a tremendous expansion in activities of education and informing consumers. This option needs greater attention in the Regulatory Impact Statement. "A core obstacle to accelerating progress on behavioural risks is the notion of individual agency and the need for governments to let individuals make their own choices. This concept is naive, given that individual choices are influenced by context, education, and availability of alternatives. Governments can and should take action to facilitate healthier choices by rich and poor individuals alike. When there is a major risk to population health, concerted government action through regulation, taxation, and subsidies, drawing lessons from decades of tobacco control, might be required to protect the public's health."[1]

1. Collaborators G 2019 V, Murray CJL, Abbafati C, Abbas KM, Abbasi M, Abbasi-Kangevari M, et al. Five insights from the Global Burden of Disease Study 2019. Lancet. 2020;396(10258):1135–59.

Comment: Lack of coherence between 'Aspirations' and 'Modernising the Act'

It is as though the 'Aspirations for the Food Regulatory System' and 'Modernising the FSANZ Act' are documents from different universes!! Unlike the Aspirations which are more all-encompassing and integrated, acknowledge the range of forces at play, and recognise relevant outcomes for the food system, the major theme/aspiration of the regulatory impact statement is narrowly focused on the commodification of the food system. The impact statement includes words such as public health and sustainability; however, these are peripheral to and not integral to the options and components. Raising trade to a core objective of the Act is the death knell of public health and food regulation. Who in their right mind would believe that public health outcomes – despite it being the overriding goal of the Act - will 'get across the line' when weighed against the outcomes of generating wealth and

financial gain. Material outcomes will inevitably win out over public health, non-material, and social benefit - the course of recent human history suggests that to expect otherwise is naïve. The example at the top of page 91 shows the type of decision that would always win out and exemplifies the serious bias in the regulatory impact statement. How is it possible, asks the example, that the cost of unnecessary delays in a 'low risk' product were AUD$10.725 million? This theme runs throughout the regulatory impact statement and is so deeply embedded in the current regulatory system that even those conducting a review of the Act fail to acknowledge it. The theme is encapsulated by 'if it's safe' why not let it into the food system? The need to consider health benefit or other desirable outcomes becomes unimportant and can be largely ignored when a product is ‘safe’. But, what defines ‘safe’ in a sustainable food system? Safety in the food system can no longer be defined solely by toxicological safety when there is unequivocal evidence that elements of the food system account for an enormous burden of disease. The example given on page 91, gives the industry perspective that the product is safe/low risk. Reject a ‘Low risk/safe product with little evidence of health benefit’ vs approve the product immediately and gain ‘AUD$10.725’, which one will always win when it comes to regulatory decisions, regardless of the implications to long-term diet-related health (in this case infant health).
The food industry has an important role in implementing and delivering change. However, companies cannot be allowed to influence and interfere in public policy making or bias the science that underpins this process. While constructive dialogue is necessary, a default seat at the table for private-sector representatives should not be assumed and policy development processes need to be firewalled from vested interests.” [1]

1. Branca F, Demaio A, Udomkesmalee E, Baker P, Aguayo VM, Barquera S, et al. A new nutrition manifesto for a new nutrition reality. The Lancet. 2020 Jan 4;395(10217):8–10.

Comment: Framework (i.e. terms of reference) of the review.
The review of the Act is so fundamentally skewed in it's framework that it permits virtually little space for reasonable evaluation of aspects of the food system that are not economic. Thus, the high-level and global discourse about sustainable food systems is largely ignored and the 'prompted' questions that define the Public Consultation create a narrow scope of ideas and input into the review. This is not a modern or future-focused approach.

I attach the comments which have been 'forced' into text boxes of the Public Consultation. The comments are brief in the context of the 134 page regulatory impact statement.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 16:26:03**

About you

What is your name?

Name:
Luke Williams

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Researcher

What is your organisation?

Organisation:
(None)

Not applicable- Responding as an individual

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
(None)

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Currently at RMIT University as an Indigenous pre-doctoral research fellow working within the native foods space. My work is concentrating on the toxicology and safety of a range of native foods that are currently being developed for commercial markets. I have high exposure to First Nations businesses and corporations who are attempting to develop their traditional foods for commercial markets. My primary supervisor is Associate Professor Paul Wright, also at RMIT University, who supports this public consultation submission.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The current food regulatory system does not recognise the unique histories and cultural connections that First Nations people have with the native flora and fauna of the Australian continent. This includes the long history of use and traditional knowledge that has been developed over many millennia. This is making it extremely difficult for First Nations applicants, who have never relied on documented evidence, to successfully meet the current regulatory requirements, which require a documented history of use.

This is resulting in missed opportunities that could otherwise see First Nations people benefit from the commercialisation of their traditional food products in a manner that utilises their culture and resources. These regulatory hurdles are also hampering efforts of the Government, industry bodies and the research sector in supporting an Indigenous-led industry.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current regulatory guidelines are outdated and need to be future proofed. This is especially true for the assessment of traditional food items. Currently there is no recognition of the knowledge that First Nations people have developed in regard to the correct and safe use of traditional foods.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
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Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Recognising the long history of use held by First Nations people in regard to the utilisation of native plants and giving a level of recognition to traditional knowledge in the risk assessment would have a massive positive impact on the native foods industry. This would not only see a larger range of foods being developed for the market but would also help promote an Indigenous-led industry by improving market access for First Nations people who wish to develop their traditional foods for commercial markets.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

How can FSANZ's activities better recognise indigenous culture and food expertise?
Currently the regulatory pathway for traditional food items is unclear and presents a regulatory barrier for Indigenous-led businesses trying to get traditional food items to market. I support FSANZ incorporating First Nations culture, traditional knowledge and food expertise into a structured systematic framework that is proportionate and fit-for-purpose. A move to option 2, where FSANZ gains more power in regulatory decision making, would enable FSANZ to recognise the traditional knowledge held by First Nations people in the assessment of traditional food items, and make use of traditional knowledge in a structured way.

Is this the right framing?
First Nations (or suitable describer) culture and traditional knowledge encapsulates the idea of food expertise.

What differences between the Australian context and the New Zealand context are important to consider?
In terms of assessing the safety of traditional food items, I do not believe there is any difference between Australia and New Zealand. The Maori, the Aboriginal and the Torres Strait Islanders all have a long history of use and extensive knowledge systems around the safe use of native plants.

What changes are required to the FSANZ Act to enable this?
The recognition of traditional knowledge needs to be incorporated into the assessment of traditional food items and its (safe) history of use. The traditional knowledge needs to be evaluated, verified and weighted accordingly, based on the level of cultural authority and detail that can be provided by both Indigenous and non-Indigenous applicants.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Increased market access for First Nations peoples would promote ownership of an industry that is already heavily reliant on Indigenous Knowledge Systems, but has so far provided little financial return back to traditional communities. Successful development of an Indigenous-led industry has the potential for many medium and long-term social and economic benefits for traditional communities, including employment opportunities on Country while caring for Country and utilising knowledge systems and practices. This would then provide an opportunity for participating Communities to achieve greater self-determination through culturally-relevant economic opportunities in a manner that allows First Nations peoples to utilise their knowledge in the management, harvesting and preparation of traditional foods.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

A risk-based approach would create a more cost-effective and transparent process that will also benefit applications concerning the commercialisation of traditional food items.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
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Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

If pursuing option 2, then I believe the draft regulatory impact statement does align with the aspirations outlined for the food regulatory system. Option 2 is innovative and future proofing the food regulatory system, which as we begin to explore new avenues for food production and consumption to meet food security and environmental issues is going to allow FSANZ to be positioned to ensure the best outcome for all stakeholders, including consumers. Sticking with the status quo (option 1) does not meet the aspirations outlined. It would also result in a missed opportunity that may otherwise lead to positive change to the food regulatory system.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 16:29:30**

About you

What is your name?

Name:
Complementary Medicines Australia

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Food Industry; Industry Organisation, non-government

What is your organisation?

Organisation:
Complementary Medicines Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

CMA is the peak body representing a thriving complementary medicines and functional foods sector supporting Australian jobs, research, manufacturing, and exports by meeting community demand for preventative and complementary healthcare. The sector in Australia is a highly capable manufacturing industry required to comply with PIC/S GMP requirements including regular inspections, and strict mandatory pharmacopoeial and other TGA quality standards. Australia's reputation for quality has evolved over several decades into an industry that is:
– A greater than $5 billion industry
– Exporting more than $1 billion annually
– Employing more than 29,000 Australians, primarily in skilled technical professions
– Since 2018, the greatest exporter to China, above formidable rivals USA & Germany.
CMA is committed to a vital and sustainable sector and we support the safe use of foods and medicines, with access through appropriate and balanced risk-based regulation, while contributing to skilled local employment, health enhancement and preventative health strategies to help Australians live healthier lives and in turn, to reduce the burden on the healthcare system wherever possible.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Currently, due to the use of non-renewable, polluting resources for food production in Australia, the food system is unsustainable and is degrading land and water systems. In addition, the unsustainability of Australia's fish populations has led to Australia becoming a net importer of fish products over the past decade (Department of Agriculture, 2019). The Australian food system is also contributing significantly to climate change through greenhouse gas emissions on-farm and throughout the supply chain (AEGN, 2019).

It's estimated that 65 per cent of horticultural and agricultural crops produced in Australia require pollination services. Securing pollination for more productive agriculture is part of a major Australian Government Rural R&D project to investigate re-establishing native vegetation to support pollinator food and nesting resources, and use new technologies to communicate the findings to farmers. Better research on new and existing pesticides are needed to protect pollinator populations, especially native pollinator populations.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Over the last decade or so, there has been growing awareness of the potential that Australian native foods offer for the development of new and emerging industries. This is particularly important for regional and remote communities and very important for Indigenous Australians. Greater work towards resolving the key legal and regulatory challenges that constrain the growth and uptake of novel natives foods is required.
A return of the food system to supporting Australian Native foods and recognising Indigenous culture and food expertise offers an approach that champions environmentally local and sustainable foods. Under Indigenous expertise, the cultivation of Australian native plants over imported varietals that require heavy irrigation and lead to soil salinity and loss of habitat, has the potential to provide environmental and cultural benefits from food production. Indigenous land management practices and knowledge about the cultivation and preparation of many native foods is being jeopardised due to increasing globalisation of the food industry (Sustainable Food Trust, 2019).

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The key risks borne by stakeholder groups for option 1 are identified in section 6.1 of the draft RIS and include the stifling of innovation due to prohibitive application costs and processes that deter applicants, which results in losses to revenue for businesses; and the inconsistent interpretation of regulations across jurisdictions which causes confusion, does not provide a level playing field and subjects businesses to inadvertent non-compliance. In the absence of specific examples, it can be estimated that across the sector the likelihood of these risks occurring is high and the magnitude of consequences depends greatly on each individual scenario however, these set-backs, delays and costs are more likely to be significantly felt among small to medium sized businesses.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The key risks borne by the complementary healthcare products sector for option 1 are similar to those identified for other stakeholder groups outlined in question 5., particularly for sponsors of complementary healthcare products who have products which either cross the food medicine interface (FMI), have products that

exist on both sides of the FMI, and for small to medium sized businesses.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

While Option 2 is likely to result in an increase in regulatory burden, Option 2 Component 1 - Clarify objectives and functions and reflect these in the Act – would represent an overall positive outcome with a focus on sustainability, trade and appropriate representation recognising indigenous culture. Despite the increase in regulation these factors would induce, the systemic consideration of regulatory burden placed on small businesses, sustainability issues or indigenous culture and expertise should be afforded by these additions to legislation.
Any attempt to modernise the Act must continue to aim for simple and easy to understand application of the regulations and standards, and a low regulatory burden for industry with fast and easy to use systems. Greater flexibility and faster application times to increase industry ability to innovate must be top priority. Safety combined with clear easy to understand regulations and ability to innovate must remain top priorities.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

As the intention of option 2 is to modernise the Act to make it agile, resilient and fit-for-purpose, if FSANZ's objectives were broadened to include sustainability, it should necessarily encompass a broad definition of sustainability, including environmental, health, economic and social impacts. With few amendments to the Act in almost 30 years, it makes no sense to limit the definition of sustainability in the contemporary environment, where sustainability in its many forms is identified as an area of priority for the health of the environment, for the Australian people and the survival of the Australian economy.
The COVID-19 crisis has put a unique spotlight on food and food systems, revealing both strengths and weaknesses across sectors and practices and forced many to confront scarcity for the first time. In some ways, it has placed consumers on a level playing field, but also exposed some deep inequalities. The pandemic and its aftermath have forced us to reconsider many aspects of our life and our society, not the least of which is the way we feed ourselves.
The UN Sustainable development goals to "End hunger, achieve food security and improved nutrition and promote sustainable agriculture" (SDG2) recognizes the inter linkages among supporting sustainable agriculture, empowering small farmers, promoting gender equality, ending rural poverty, ensuring healthy lifestyles tackling climate change, and other issues addressed within the set of 17 Sustainable Development Goals in the Post-2015 Development Agenda.
Sustainability must have a critical focus on healthy ecosystems, retaining critically biodiverse habitats including rainforests and other complex habitats, and protection of endangered species. It is no longer acceptable to the Australian community to continue to accept products such as non-sustainable palm oil that are significant contributors to destruction of rainforest ecosystems and endangered animal populations such as orangutans.
There must be better economic incentives and rebates to sell sustainable alternatives to other less sustainable products, so that consumers can support these products without incurring an additional expense that many cannot afford.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

A greater focus on sustainability has the potential to create considerable market opportunities for Australian and New Zealand, as consumer purchasing is increasingly influenced and driven by sustainable industries, brands and product life cycle (WBCSD, 2019).

Sustainable packaging
The primary function of packaging is to contain and protect products from the point of manufacture, through the supply chain to the retail store or end user, to attract people to buy a product to achieve more sales, and to provide product information. 'Sustainable packaging' is packaging that performs this primary function but also has lower environmental impact compared to existing or conventional packaging (APCO SPGs, 2020)
The Australian Packaging Covenant Organisation (APCO) has prepared the Sustainable Packaging Guidelines (SPGs) which are a central part of the co-regulatory framework established by the National Environment Protection (Used Packaging Materials) Measure 2011 (the NEPM) and the Australian Packaging Covenant (the Covenant). The SPGs are to assist the design and manufacture of packaging that meets the sometimes conflicting demands of the market, consumer protection and the environment.
The purpose of the guidelines are to assist business to integrate the Principles into the right business areas, to achieve the optimal outcomes for packaging functionality, and to collectively work to meet Australia's 2025 National Packaging Targets:
100% of all Australia's packaging will be reusable,
recyclable or compostable by 2025 or earlier;
• 70% of Australia's plastic packaging will be
recycled or composted by 2025;
• 50% average recycled content will be included
across all packaging by 2025; and
• Problematic and unnecessary single-use plastic

packaging will be phased out through design,
innovation or introduction of alternatives.

By integrating the SPGs into core business activities such as design and procurement, organisations may achieve a range of benefits:
• such as improved reputation and market competitiveness by meeting customer or consumer expectations for responsible packaging.
• Cost savings from more efficient packaging and transport logistics.
• Avoiding negative publicity associated with packaging that is perceived to be ecologically damaging.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

The best way to identify and determine appropriate ways for FSANZ to better recognise Indigenous culture and food expertise is through targeted, appropriately funded consultation/engagement with Indigenous stakeholders.
As discussed in the draft RIS, there are a number of considerations about how FSANZ can better recognise indigenous culture and food expertise; the current language in the Act could be amended to recognise and protect traditional foods and food production, preservation, and processing techniques; a more culturally inclusive framework could better recognise indigenous culture and food expertise and support timely entry to market for indigenous food businesses; and consideration and exploration of traditional indigenous knowledge alongside western science can further support inclusive methods of validating the safety of food.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Due to increases in demand and lack of supply of many traditional goods, economic opportunities exist for traditional Indigenous foods and ingredients in the broader market domestically and globally. There is great potential, particularly in regional and remote regions, to empower and benefit Indigenous businesses and communities to develop food and tap into the unexplored market potential. However, it should be noted that Indigenous businesses are underrepresented in the traditional goods market and it is not necessarily always Indigenous businesses that are benefiting from bringing these traditional goods to the broader market. Therefore, increased support for traditional foods cultivated, supplied, and manufactured by Indigenous business not only provides direct economic and cultural benefits to individuals, communities and businesses, but also supports the sustainable, environmentally suitable production of native goods.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Reductions in regulatory burden on food businesses, including industry self-substantiation for very low-risk products without the need to vary a Standard, while maintaining regulatory oversight and enhancing timely outcomes are favourable outcomes for the sector under Option 2 Component 2 - Facilitate risk-based approaches to developing or amending food regulatory measures.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

This concept should be explored further to allow the delegation of decision making to the FSANZ Board were this would benefit the system.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Anecdotally, it is understood to take between 9-12 months for a comprehensive risk assessment to be conducted by FSANZ once an application has been made.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

It is suggested to look to similar examples within the therapeutic goods regulatory system which has adopted a very similar approach in accepting comparable overseas bodies information when taking into account sovereign decision making. Nonetheless, domestic considerations must be taken into account, and a consultation process to ensure the relevance and impact of any adoption can be considered in full. If necessary, the ability to modify the conditions of any adoption must be available.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Proposed measures to foster innovation and reduce regulatory impost to industry under Option 2, Component 3- Build in flexibility to create bespoke regulatory sandboxes- would provide positive outcomes overall. The expansion and tailoring of the regulatory framework in an agile way, on a case-by-case basis provides a functional approach to often complicated and nuanced aspects of regulation where a ‘one size fits all’ approach often fails to recognise and account for unique scenarios across the wider regulatory environment. Allowing for expansion in research and development, innovation and market access provides industry with the necessary support to grow and thrive, providing a sustainable long term framework into the future.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Novel food products and ingredients such as probiotics, prebiotics, herbal substances, biological substances, new nutritional substances or forms of substances could be appropriately and safely introduced using regulatory sandboxes.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Component 4 - Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation – would provide an overall positive outcome. Industry would welcome the creation of a rich data repository that could be used for key insights; and the regular, holistic review of standards to support reduced compliance burden and provide the basis for consistent, fit-for-purpose standards. These measures would act to streamline processes and ensure information used to inform wider processes is current, relevant and accurate.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

While there has, to date, been limited collaboration and integration of effort across the regulatory system, under Component 5- Foster new approaches to working with other agencies, with a focus on intelligence-sharing- there is potential for greater coordination at standard-setting/policy development interface that would improve system alignment and confidence in the regulatory system. This would be beneficial, provided that FSANZ’s independence and/or ability to exercise its executive oversight functions effectively. In addition, reduction of duplication and enhancement of collective impact by fostering more strategic end-to-end partnerships between FSANZ and other stakeholders has the potential to be advantageous, particularly through enhanced sharing of information (including risk assessments) with overseas jurisdictions. However, it remains unclear as to the extent of the recognition or alignment of FSANZ’s efforts with broader governmental objectives to promote efficiencies across the joint food standards system.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Option 2, Component 6 - Streamline FSANZ’s governance and operations- would have a positive outcome for the complementary medicine sector. More efficient and effective governance, including a smaller, explicitly skills-based Board who are subjected to a streamlined nomination process and are able to meet virtually

would greatly contribute to a resourceful organisation in which many improvements would been seen. Benefits of this streamlining include efficiencies in decision making, reduced costs to the organisation and a greater level of expertise among the Board. In addition, investment in updating existing information and communication systems and relevant technologies would increase the capability of the organisation to remain fit for purpose into the future.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The industry costs identified with component 6 of option 2 include potentially reduced influence over FSANZ's board decisions due to fewer members with an explicit industry focus. This would inherently pose a risk to industry as broader industry interests may not be accounted for. Risks may include unnecessary up-regulation and unintended cost and resource implications of decisions.
An explicitly skills-based Board should necessarily include an industry representative with knowledge of the sector and perspective on the associated impacts that Board decisions could have upon industry. Without a Board appointed industry representative, the likelihood of these risks and the magnitude of the consequences is great.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Outlined in question 28.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

It may be appropriate to expand the cost recovered work of FSANZ, particularly if the cost recovery measures ensure improvements to the efficiency, productivity and responsiveness of government activities and accountability for those activities, such as the provision of interpretative advice, on which stakeholders can rely for compliance.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The impacts on industry of broader cost recovery activities could be significant, particularly for SMEs. Therefore, it is necessary to establish the needs of industry and identify areas where industry would benefit from any additional proposed cost recovery measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Only via public consultation

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Inconsistencies between regulation and requirements for substances which fall at the food medicine interface (FMI).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Under Option 2 Component 2 of the RIS, both the pre-market focused Automatic adoption and Minimal check pathways have the potential to reduced regulatory burden for industry and are key to leveraging the international evidence base.
However, for very low-risk ingredients, the introduction of a post-market focused industry self-substantiation pathway to bring products to market would enhance risk-based and efficient regulation. This pathway could further reduce regulatory burden on industry and represents an efficient use of FSANZ resources.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

While this option involves introducing new regulation, a reduction in regulatory burden associated with ambiguity inherent to the current system would be welcomed by industry. Additional mechanisms for interpretive advice would better equip industry with necessary information to avoid inadvertent non-compliance by reducing interpretive uncertainty and improve consistency, particularly for SMEs and those businesses operating across jurisdictional boundaries.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

With relevance to the complementary medicines sector, Option 3 Component 3 provides that positioning FSANZ to take on an enforcement role could uplift regulator capability across the joint food standards system by improving the current frictions at the food-medicine interface in Australia. The RIS states that this proposed change would mean the policy and enforcement responsibilities of both food and medicine would be contained with the Australian Department of Health (albeit, in different divisions). This would require significant changes for the food regulatory system and subsequently, have significant impact on industry. It is difficult to determine whether the benefits of an eventually less burdensome and more consistent regulatory environment for cross-jurisdictional trading outweighs the more immediate regulatory uncertainty and costs of implementation over an undetermined period of time, particularly for SMEs.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Providing FSANZ the necessary legislative remit to effectively coordinate international harmonisation work to help create new economic opportunities for Australia and New Zealand's food industry is a welcome outcome for the sector. Particularly as the harmonisation of standards would increase Australia and New Zealand's access to foreign markets, potentially making both countries more attractive options as manufacturing locations.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Elements of both Options 2 and 3 align with the draft Aspirations for the Food Regulatory System.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Elements of both Options 2 and 3 align with the draft Aspirations for the Food Regulatory System.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 16:56:18**

About you

What is your name?

Name:
Kay Gibbons

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
consultant - working in areas of public health and food safety

Not applicable- Responding as an individual

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

While the current Food Standards maintain a safe food environment the processes are cumbersome and the allocation of responsibilities across authorities also makes more complexity for consumers and professionals.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Option 2, as oultined, represents an improvement toward the ideal. It addresses a number of the concerns raised regarding the current limitations of the Standards

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

I would support a broad definition of sustainability as the ideal. Other organisations are now considering, in thinking formally about sustainability for the first time that this needs to address issues beyound the environment - this is becasue of the inter-relationships between other impacts. Consideration of the environment alone may have negative impacts on other areas; these at least must be considered.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

For industry a broader focus on sustainability would be helpful internationally as other countries are looking not to just Australia and New Zealand as suppliers of 'safe' foods but to be considering the environment.
Internally industry may benefit from a better understanding, and some balance/offsets in decisions when a broader understanding is applied.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Broader understanding may benefit application to production methods and suitable crops etc. This requires input from experts in the area. In terms of extending markets an initial consideration is whether indigenous communities want this.

i can see that the Australian and New Zealand contexts are different but cannot provide details. The Act could mamage this through generic requirements for consideration and consultation

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

As in above, economic benefits to local communities may arise from bringing goods to the broader market but these may not always be welcomed if they require changes to processes and aceptance of greater regulation.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Yes, as the FSANZ Baord includes greater specialist expertise to assess some areas. This could include areas which do not have specific state implications. eg public health

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

In theory this information worthy of payment but speaking about universities this would not viewed favourably and pressure would be on internal users to fund this from grants etc.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

While understanding the costs of broadening FSANZ scope cost recovery has negative consequenes unless handled carefully eg priority to areas of work involving cost recovery

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This may limit innovation or simply place greater burden on businesses (and ultimately consumers) - dependent on the ares of recovery

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

I see that Option 3 aligns most closely with the Draft Aspirations - as a country (countries) wishing to pursue an internationla position but also wanting to offer safety and information to our local populations this option provides the most comprehensive option. This includes supporting innovation and the opportuntiy to put forward proposals and to consider sustainability from across domains, and to consider public health implications.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
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Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 17:50:20**

About you

What is your name?

Name:
Sarah Lochrie

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Fonterra Co-operative Ltd

Which country are you responding from?

Drop down list about which country the respondent is based:
Trans-Tasman organisation

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Fonterra is a global dairy nutrition company owned by 9,000 farmers and their families. With a can-do attitude and collaborative spirit, we are a world leading dairy exporter. We draw on generations of dairy expertise, and are one of the world's largest investors in dairy research and innovation, to produce more than two million tonnes annually of value-added advanced dairy ingredients, foodservice and consumer products for over 140 markets.
In Australia, Fonterra operates 8 manufacturing sites across Victoria and Tasmania and employs around 1,650 people. Fonterra Australia collects around 2 billion litres of milk annually from almost 1,300 farmer suppliers. This milk is made into the many Fonterra dairy foods that generations of Australians have grown up with and love, including Perfect Italiano™, Mainland™, Western Star™ and Bega™. The business also sells dairy ingredients to many of the world's leading food companies and it operates a dedicated sales channel for the foodservice industry, providing a full range of dairy products specifically designed for commercial kitchens.
Fonterra Brands New Zealand is a market leader in the consumer dairy segment with a portfolio of milk, yoghurt, cheese, butter and spreads and our Brands include Anchor, Fresh 'n Fruity, Kapiti, Mainland, Perfect Italiano and Primo.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The breadth of comments in the document on the defined policy problems is recognised as a good summary of the concerns raised during previous discussions. Our key concerns with the current system are covered under policy problems 1 and 2.
Fonterra appreciates that the options and associated components are designed to address the individual issues within each policy problem and as such we will respond accordingly in the following commentary.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food industry is embracing sustainability and has been actively working toward change for many years – this will continue into the future. Here at Fonterra, we are committed to producing dairy nutrition in a way that cares for people, animals and our environment, and brings value to our communities. We also appreciate that sustainability is increasingly becoming a driver for consumer behaviour and purchasing habits.
The discussion paper suggests “industry can make unregulated claims regarding the environmental sustainability of a product” (Page 27), Fonterra consider this statement incorrect. In NZ, as mentioned in the discussion paper, the Commerce Commission has a role in ensuring environmental claims. Similarly, the Australian Competition and Consumer Commission (ACCC) ensures this in Australia. Both agencies have provided guidance documents to industry on making claims in this area:
• Australia: https://www.accc.gov.au/publications/green-marketing-and-the-australian-consumer-law
• New Zealand: https://comcom.govt.nz/business/dealing-with-typical-situations/environmental-claims
Due to the breadth of sustainability touch points within the food industry and the number of government agencies that already have an active role in sustainability, Fonterra do not consider there to be a need for FSANZ to have a formal role in this area. We do consider that FSANZ could have a participatory role in discussions and responses related to sustainability, but this would not be formal. Where sustainability developments impact on areas within the remit of FSANZ, such as food safety and quality, FSANZ needs to be engaged / have a role. For example, the global drive for a circular economy will see an increase in the use of post-consumer recycled (PCR) material in food packaging. In some jurisdictions the incorporation of PCR in food packaging is being mandated, a move that is also being considered by Australia and NZ. The incorporation of PCR in food packaging increases food safety risks due to the presence of Non-Intentionally Added Substances (NIAS). Fonterra would like to see FSANZ review potential packaging food safety control mechanisms in this area. There are significant learnings that can be drawn from the EU and US who have implemented regulatory packaging controls.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Fonterra support the inclusion of indigenous cultures and expertise within the objectives (S.18(2)) as a matter for which Food Standards Australia New Zealand (FSANZ) must have regard. Inclusion in this manner is aligned with the The Treaty of Waitangi / Te Tiriti o Waitangi which provides for ‘Rangatiratanga’ or self determination to ensure that Iwi M■ori have the right to protect their customs and way of life including recognition of M■tauranga M■ori and the contribution that Te Ao M■ori can make to our food regulatory systems. The M■ori economy is making a significant contribution to the overall New Zealand economy especially within the primary sectors, including dairy, horticulture and fisheries and as such we consider it appropriate that indigenous cultures and expertise are included as part of consultation.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Fonterra considers that retaining the status quo would not achieve anything in modernising the food regulatory system for the future and would be a missed opportunity to review a regulatory instrument that is now almost 30 years old. The current challenges would therefore remain, and we risk the Australian and New Zealand markets falling behind the rest of the world, especially on innovation. Largely because the current Act is inefficient to administer and fails to support a resilient and agile regulatory system.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Fonterra considers that the key risks align with not addressing the market failures identified during discussions thus far. For example:
• Delays for ANZ consumers access to new ingredient innovations resulting in missed opportunities to gain access to ingredients which may influence positive nutrition outcomes, despite these being approved overseas (E.g., A1155 human milk oligosaccharides).
• Uneven playing field that influences consumer choice - this is a result of inconsistent interpretation of regulations by enforcement authorities (E.g., health claims).
The likelihood of these failures continuing is high, but the magnitude of consequence is not easily quantifiable. The current legislated process for changing food standards is inflexible, costly and doesn’t support innovation. This is reducing the ability of the Australian and New Zealand food industry to expand and create economic growth for both countries domestically and through export trade.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Fonterra does not have any such data.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Fonterra is unaware of any costs and benefits.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Fonterra is not aware of any data.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Please refer to response to questions 4 to 6.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Not applicable.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra is generally supportive of Option 2, Component 1 however there are some areas where further consideration is required for the suggested amendments to the Act.
Fonterra supports aligning of s 3 to “a high standard of safety and public health protection” as it ensures that food safety is a key focus of the food regulatory system.
Fonterra support the inclusion of trade within FSANZ objectives provides greater impetus for FSANZ to support industry and innovation. We therefore support the inclusion of “an efficient and internationally competitive food industry”. While we welcome its inclusion in the objectives, we do not agree that trade should be subordinate to public health protection. The provisions within the current objectives do not have any hierarchy. If we did hierarchy current objectives, food safety should be at the top with all other subordinate. In a similar manner when trade is added to the objectives, it should be subordinate to food safety but not to public health protection. Trade and public health protection should be considered equal objectives.
Fonterra support establishment of criteria to be met for the Food Ministers’ to request a review of FSANZ decisions and strongly support the criteria being aligned to the objectives and factors to which FSANZ must have regard (s.18) to ensure consistency is approaches. This would help prevent the delays observed during the A1155 applications where the Food Ministers Meeting had different considerations which FSANZ had to go back and review.
Fonterra do not support food sustainability being added to the FSANZ objectives. The term “sustainability” is extremely broad and incorporates many aspects which are within the scope of other government organisations, therefore there is no need for FSANZ to duplicate effort. Further, the increasing consumer demand for a sustainable food supply will drive the whole food industry to be more sustainable without the need for FSANZ to play a leading role. As mentioned earlier FSANZ needs to focus within its current objectives and pre-empt the increasing innovations and developments that the drive for food sustainability brings, in order to protect the safety of the ANZ food supply.
Fonterra support the inclusion of indigenous cultures and expertise within the objectives (S.18(2)) as a matter for which FSANZ must have regard.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

As touched on question 2, Fonterra does not support a role for FSANZ in sustainability.
Due to the breadth of sustainability touch points within the food industry and the number of government agencies that already have an active role in sustainability, Fonterra do not consider there to be a need for FSANZ to have a formal role in this area. We do consider that FSANZ could have a participatory role in discussions and responses related to sustainability and should act within the boundaries of the current objective of food safety as required (E.g., use of PCR in food packaging material).

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Many food companies are very focussed on sustainability, this is being driven by alignment to global reduction targets (E.g. Paris agreement, UN Sustainable Development Goals) and consumer demand. We believe that value from these activities will continue to be captured over time without the need for FSANZ involvement.
There are concerns that if FSANZ was to include sustainability in its objectives that it could potentially generate costs to business through the diversion of FSANZ resource away from matters which are more core for the driving food safety, public health protection and trade.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Fonterra support that FSANZ activities should recognise indigenous culture and food expertise. In NZ, constitutional requirements to M■ori and the Treaty of Waitangi / Te Tiriti o Waitangi are important considerations for policy development. It is therefore appropriate that FSANZ should also recognise M■ori and the Treaty of Waitangi / Te Tiriti o Waitangi. It is unclear from the discussion paper what recognition of indigenous culture and food expertise might look like and therefore further discussion on this is required.

We are unable to comment on the framing being right as this will depend on how the recognition is incorporated.

Fonterra support the inclusion of indigenous cultures and expertise within the objectives (S.18(2)) as a matter for which FSANZ must have regard.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Not applicable to Fonterra at this point in time but there may be opportunities for collaboration in the future.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra is generally supportive of Option 2, Component 2. We agree that this approach can result in a more efficient and effective process for developing food regulatory measures. We note that there are a range of proposed actions underneath this component and comment on each below:
Fonterra agrees that the broader use of a range of regulatory instruments will increase agility and response to change and is therefore supportive of an approach that implements the best tool for the job. We'd consider that in some instances it is useful for FSANZ to engage experts to develop guidelines without having to do the work themselves (E.g., PEAL and the AFGC/Allergen Bureau collaboration).
A decision-making tool would be considered valuable and would equally be useful for industry in helping to identify pathways and route to market early in an innovation project lifecycle.
Fonterra supports that risk is an appropriate process driver for applications and proposals as this allows for flexibility in approach. We are, however, concerned about some comments within the RIS and would like a further opportunity to discuss:
• Alignment of risk to the government risk appetite – does this mean any framework developed would be reassessed when governments change to ensure continued alignment to government risk appetite? If this approach was subject to frequent change, it creates uncertainty for industry and creates risks with changing goalposts.
• Industry should be considered a key stakeholder in the development of any risk framework development and should help inform the criteria.
• There is a suggestion in the document to abolish the pathway for high level health claims (HLHC). While we appreciate no new claims have been requested since the regulation was enacted, there must be recognition that science takes many years to develop and given the nature of HLHC it is not surprising that there have been no new claims added in recent times. We would appreciate further discussion on this to confirm what is being proposed – is this abolishment of the pathway or the entire HLHC framework? If we abolish the current pathway, industry still requires a process to add new claims to the schedule in the future. We do not support abolition of the currently approved HLHC without FSANZ consideration for how claims might be added in future.
Fonterra does not support automatic adoption of international standards. While Australia and New Zealand have voice on Codex Committee's for example, because they run by consensus our countries may not align with the final standard published due to differences in market approach, culture, food trends etc. We therefore support a minimal check pathway with some period of notification or consultation to expedite low risk amendments to food standards.
Fonterra support additional pathways such as self-substantiation to bring new low risk products to market in supporting greater economic opportunities for food business.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Fonterra agrees that the Food Ministers Meeting doesn't need to approve all changes to the Code and supports the delegation of some decision making. That said, Fonterra is concerned that if delegation was decided on a case-by-case basis no improvements in efficiency would be seen. Fonterra, therefore, supports the development of a clear decision-making framework where lower risk decisions (E.g., processing aids) are automatically delegated away from the Forum and to FSANZ.
Delegation could be applied for minor adjustments to the Standards such as addition of additives, processing aids, low risk labelling and compositional matters.

It is important that decision-making bodies have the same criteria for objectives as FSANZ in reviewing food regulatory measures. This ensures alignment across groups. For example, A1155 where FSANZ has regard for difference criteria to the Food Ministers Meeting which resulted in a different decision being taken than what was recommended by FSANZ.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Fonterra supports extended use of a range of regulatory tools including Codes of Practices or Guidelines. However, development of such tools should be done in collaboration with industry and non-industry agencies who have expertise in the subject area being developed (E.g., Recently the AFGC Allergen Forum and the Allergen Bureau developed updated industry guidelines on the new plain English allergen labelling requirements).
Some areas where CoP's or guidelines might be useful are microbiological measures and processes related to novel foods and nutritive substances.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Costs and time varies significantly depending on scope of application. We can provide this info in confidence.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

Fonterra are not aware of any data to demonstrate cost savings. We can envisage that there would be significant time savings which would result in tangible value to business both in terms of saved resources in pulling information together and potential speed to market benefits which is difficult to quantify.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra is generally supportive of the regulatory sandbox concept; however, we require more detail to fully assess this proposal.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

It is difficult to confirm without better understanding of the potential process, however, the regulatory sandbox may be appropriate to be applied to novel foods which are considered traditional (not novel) in their country of origin.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra consider that FSANZ already play a role in the provision of food safety intelligence and recognise that this is important in driving future focussed regulation. We are therefore supportive of FSANZ continuing with this work and have comments below related to the specific areas identified within Component 4 of the RIS:
Fonterra supports FSANZ being resourced to undertake a strategic approach to standards review to promote ongoing relevance of standards. Fonterra proposes monitoring standards for performance and developing criteria for triggers of 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.
Fonterra support FSANZ in coordinating food safety research across Australia and New Zealand. This would help create a framework of research programmes that reduce duplication and identify gaps.
Fonterra are unsure about the role of FSANZ as a guardian of key food safety databases. Within NZ, MPI holds much data related to food safety and processing. Any sharing of that information with FSANZ needs to be balanced against the intellectual property contained within the data. There may be benefits in food composition databases as all information is generally available in the public domain. Therefore, the scope of any potential database(s) will be key.
Fonterra does not oppose FSANZ taking a role in consumer facing food safety education materials to increase public awareness of food safety, labelling and food regulation; provided resources are made available in addition to core functions. Any education work would need to be coordinated with jurisdictions and other government departments to maximise value, potential reach and ensure consistency of messages.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Currently FSANZ undertake horizon scanning to detect and consider implications of emerging food safety hazards. We support this activity.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra is generally supportive of this component with some further detailed comments on the proposal below:
FSANZ as a science and evidence-based agency should not require consensus from the Food Ministers Meeting when setting the agenda, to ensure politics doesn't influence the agenda. There must be a separation between politics and science in the agenda setting. Fonterra agrees FSANZ and the Food Ministers Meeting could undertake joint agenda setting through an annual item on the Food Ministers Meeting agenda to discuss prioritisation and agree which proposals be progressed as part of FSANZ workplan. This would help facilitate discussions when the Food Ministers Meeting assigns work to FSANZ by having a broader understanding of what FSANZ are working on and the potential knock-on effects it any new proposals from the Ministers would have from a resource perspective.
Fonterra agrees that FSANZ could partner with other government agencies to make intelligence-led decisions and reduce duplication of effort. Specifically:
• Collaborating with enforcement agencies has potential positive outcomes
• Continued collaboration and information sharing through international partnerships with overseas jurisdictions is supported. FSANZ already have established working relationships with Health Canada and EFSA.
• Coordinating an integrated approach to food regulation with other agencies (E.g., National Measurement Institute, ACCC, Department of Agriculture, APVMA) to ensure consistent definitions, regulation and remove duplications for consumers and industry.
Leveraging of FSANZ's databank to enable high-quality research work would be viewed as positive. However, we'd consider that it should already be being used to inform policy work across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Fonterra considers that access to data should be free of charge. If charges were applied, it may disincentivise external parties sharing information with FSANZ. Thereby limiting the size of any potential data set.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra supports efficient and effective governance. We agree that a board should be skills-based but hold reservations toward a smaller board. This is due to the wide breadth of FSANZ work and therefore the need for a broad range of expertise on the board, with the ability to bring in additional expertise as required on a case-by-case basis.
Fonterra support initiatives that allow business to help staff work more efficiently. We would not consider that this needs to be legislated and any investment by FSANZ would need to be conducted based on a cost/benefit analysis.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Overall option 2 would be positive for industry. As with any legislative change the key risk for us lies in the unexpected consequences of implementation. As such industry would appreciate being consulted on the draft Act so that we might be able contribute broader perspectives to the draft.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Improvements to operational agility and improved flexibility would generate savings, though difficult to quantify. This would likely mean a reallocation of resources into other priority work for both FSANZ and industry.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Fonterra is not aware of any data to support quantification of option 2.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Fonterra does not believe the Act should provide additional cost recovery mechanisms. It is not clear what additional types of applications FSANZ might charge for and any changes risk impacting small to medium businesses.
The ANZ market is relatively small and due to the cost benefit hurdle, multinational companies evaluate their return on investment before making applications for new ingredients to be added to FSANZ standards. The current legislated process and costs currently mean the bar to entry can be viewed as high and may ultimately result in limiting consumer choice within ANZ. The ability to utilise the risk assessments of other jurisdictions will help to reduce resource requirements on low-risk ingredients and ease budget pressure making the ANZ market entry potentially more viable. Any additional cost recovery risks eroding this benefit.
If FSANZ is able to provide interpretative advice, this should not attract fees since this risks creating a legal system where not everyone has equal access to information that impacts on compliance.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Food regulations and standards are generally implemented to benefit broader industry, not a single company. As such, additional cost recovery of activities beyond FSANZ current scope may create difficulties, especially for small businesses.
For example, in the US, the FDA's budget is provided for by the federal budget. Food regulatory activities account for 19 percent of FDA's budget; only 1 percent of these activities are paid for by industry user fees .

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Fonterra rarely applies to make applications for changes to the food regulatory system but has done so when required. We more frequently engage through taking part in consultations relevant to our business scope and in discussions directly with MPI on health claims.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The most significant impact on our organisation is created by the delays in proposals progressing due predominately to impacts from requests from the Food Ministers and paid applications. For example, P1028 P1024 and P1047. This delays beneficial changes from streamlined risk proportionate clear pathways to bring new innovations to market, supporting harmonisation with international regulations to better facilitate trade as well as reflects current science. This is important in FSANZ maintaining its reputation as a science-based organisation that supports innovation. The impacts of these delays make it difficult to plan resource availability to adequately consider and respond on the Consultation processes.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Fonterra support expanding the pathways available to industry to amend the code including self-substantiated pathways. We would envisage that this would create more opportunities to engage.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative.
Fonterra do not support FSANZ coordinating food incidents and recalls for Australia and New Zealand. The current system is working well.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Fonterra is unable to provide specific comments on costs. It can be considered however that costs vary by the type of incident/recall, the type/volume/distribution of product. Reputation damage as a result of such activities is also difficult to quantify.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

A function for FSANZ in food recalls and incident response would not be equally valuable across Australia and New Zealand.
New Zealand currently operates under a single regulator. Providing a role for FSANZ in this manner risks adding complexity to a system for no real advantage. We do not support a role for FSANZ in NZ.
In Australia within our jurisdiction, it is believed that the current approach is efficient and we wouldn't support more FSANZ involvement. We are aware that this may not be the case across all states and territories.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Fonterra supports the opportunity for FSANZ to provide greater guidance on food standards. There are several specific options within this component, and we address each of these below:
Fonterra supports the use of statement of intent within the Food Standards Code to help provide context on what FSANZ wants to achieve by setting standards.
Fonterra supports FSANZ to update and maintain industry guidelines. Any such guidelines should be a collaborative approach between FSANZ, industry and enforcement agencies – this would help facilitate consistency in understanding and interpretation. We note that under this suggestion is commentary that a power could be introduced for FSANZ to make binding interpretations about food standards. Fonterra see value in FSANZ making binding interpretations which are limited to food composition and labelling. However, further discussion on what may look like and how it would be implemented needs to be discussed.
Fonterra supports FSANZ being resourced to support industry in preparing dossiers to substantiate general level health claims for Australia. In NZ MPI routinely support industry in dossier development and there would be value in a similar service being made available to Australian based companies. This would support innovation in both markets, and consistent interpretations. Fonterra also suggests FSANZ needs to ensure Schedule 4 remains up to date with claims approved in other markets that all industry can leverage.
Determination of product compliance at the food medicine interface is complex and navigating where products sit in terms of the food medicine interface would be better facilitated if FSANZ and TGA could collaborate in establishing feedback to business. Fonterra is therefore supportive of FSANZ in aiding businesses to make informed decisions on whether products are foods. We recognise that the NZ Food Act 2014 contains a more specific definition of food than is currently within the FSANZ Act, however as the food industry evolves into the future it seems challenging to expect this definition will remain current. We therefore suggest that a process for a decision facilitated between FSANZ and TGA collaboratively would ultimately result in the best outcomes while enabling for a holistic review of the proposed products best fit based on a multitude of factors including ingredients, packaging, claims, consumption, manufacturing etc. Further, we support alignment of the TGA definition for therapeutic good.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Fonterra is not aware of any data.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

A function for FSANZ in enforcement would not be equally valuable across Australia and New Zealand.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

New Zealand currently operates under a single enforcement agency. As such, we do not support a role for FSANZ becoming a single, bi-national regulator.
Fonterra do consider a potential role for FSANZ in taking on limited enforcement activities as an Australian-only national regulator. These enforcement activities should be narrow in scope to ensure limited overlap with local enforcement agencies, and it is proposed that FSANZ could cover labelling and composition. Further discussion is required.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Fonterra does not hold such data.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Fonterra does not support FSANZ extending Australia and New Zealand influence on the international stage. As two separate countries with different issues, trade arrangement and are also competitors in the marketplace, it is important that each country maintains its voice. While we appreciate generally Australia and New Zealand will agree on matters there will always be areas where different views are taken due to the local context. It is our view that two voices advocating for a common position are stronger than one.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Fonterra appreciates that the current Act fails to recognise trade as an explicit core goal for FSANZ and that Option 1, Component 1 is providing options for this to change which is positive for industry. However, we note that this is not explicitly covered in the aspirations of the food regulatory system and strongly believe it should be more clearly mentioned within “Our future”. The growing nature of the food supply chain globally is going to mean increased levels of trade into the future. Perhaps the below change could be proposed as a more encompassing statement on inclusion of trade for “Our future”:
From: ongoing changes to international trade relationships
To: ongoing changes to what and how we trade and international trade relationships

48 Which components of each reform option do you consider to be your sector’s highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

• Inclusion of trade as an objective within the Act and within the food regulatory system aspirations.
• Establishing of criteria for which the Food Ministers Meeting must meet in order to request reviews of food standards applications and proposals for work.
• Delegation of decision making for low-risk standard amendments to The Code to the FSANZ board.
• Implementing a risk-based framework to support flexibility in approach to applications and proposals.
• Recognition of other competent authority risk assessments and approvals to facilitate expedited updates to FSANZ standards.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Refer to response to question 47.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
Fonterra Submission FSANZ Act Draft RIS.pdf was uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 17:53:27**

About you

What is your name?

Name:
Carolyn Macgill

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Food and Beverage Importers Association

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
Victoria

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Please refer to the document attached to this submission as it contains the FBIA's responses.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
FBIA_REVIEW OF THE FSANZ ACT 1991 – DRAFT REGULATORY IMPACT STATEMENT .pdf was uploaded

RESPONSE TO: Public Consultation, review of the Food Standards Australia New Zealand Act 1991 – draft regulatory impact statement

About Us

The Food and Beverage Importers Association (FBIA) represents and promotes the interests of food importers with governments, authorities and key industry stakeholders. The association works to minimise the impact of regulations while achieving the government's public policy objectives.

The FBIA is an industry association supporting Australian importers of food and beverages in retail ready packs, food service and product as an ingredient for further processing. Members include companies operating in freight and logistics, expanding our coverage of the supply chain.

Members range from large multi-national companies to small specialist importers. Member imports include a wide range of commodities such as vegetables; fruits; nuts; dairy; seafood; confectionery; and oils. Products are imported in a range of formats, including frozen; fresh; roasted; prepared; processed; and retorted. The value of FBIA member food imports is approximately $1.2B; making them a significant contributor to the Australian economy.

FBIA importer members are in a growing sector with the growth of imported food predicted to initially remain steady with increases year on year. Imported food accounts for a large share of the gourmet grocery items and international foods, catering to Australia's large number of ethnic communities. IBISWorld

The FBIA is represented on a range of industry related committees to ensure our members are fully aware of legislation, regulations and compliance that affects their businesses. FBIA representation ensures governments and other bodies can access credible industry feedback which supports the ongoing development of instruments which govern the importation of food and trade.

Further information on activities and management of the FBIA go to the Association's website: www.fbia.org.au .

Introduction

This submission is made on behalf of the members of the Food and Beverage Importers Association (Australia).

The FBIA welcomes the opportunity to provide their feedback regarding the Review of the Food Standards Australia New Zealand Act 1991 – draft Regulatory Impact Statement.

Thank you for your consideration of the comments, issues and views raised in this submission.

FBIA Executive Summary

FBIA members represent many of the large ingredient and food importers supporting local manufacture, distributing foods from all over the world.

Ai Group's monthly Performance Manufacturing Index (PMI) notes that the food sector is continuing to expand and states:

• *The food and beverages (& tobacco) sector produced $27.2bn in real value-added output in the year to Q4 2020 (25% of manufacturing real value-added output). It employed 223,000 people in February 2021 (26% of manufacturing employment, ABS data). It is Australia's largest manufacturing sector.*

• *The index for food and beverages increased by 1.7 points to 61.9 points in April, indicating another strong month of expansion (trend).*

• *Some respondents noted a return to more 'normal' demand patterns from their customers in April. Others noted a boost from Easter sales.*

As the food sector continues to expand, we see an increase in innovation – influencing the development of new ingredients and new products. These evolutionary changes coupled with consumer driven product development increases pressure on a system that is inflexible and slow to respond. If we are to continue to have a globally recognised system, it needs to become flexible and agile, responding proactively to meet regulatory and commercial objectives.

The Australia Government has elevated food manufacturing (and supply) to the list of Critical Infrastructure and Systems of National Significance and have shown support for the sector through the Manufacturing Roadmap. It is essential that we align and develop the FSANZ Act to better support one of Australia's important sectors, working with importers, exporters and domestic manufacturers and distributors.

Option 1: Retain the status quo

Q4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

The FBIA considers Option 1 would represent a negative outcome for the food and beverage sector. Retaining the status quo would not address the policy issues identified.

Q5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

The FBIA considers the current review of the FSANZ Act draft RIS is the first step towards reform of the food regulatory system. Industry needs it.

Q6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data

Please attach a copy of any documents you wish to include to this printout.

The FBIA does not have any data.

Q7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

The FBIA is not able to comment re cost or benefits and are unable to provide further costs and benefits which need to be considered as part of Option 1.

Q8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

The FBIA has no data.

Q9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

The FBIA supports the continued regulation of food and beverages. All food manufacture carries some risk and Australia needs to maintain, if not increase, momentum with the food system to support innovation.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

Q11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector.

Please select only one item Positive Negative Neutral

The FBIA considers Option 2 would have a positive outcome for the sector. It would address the Policy Problems 1 and 2.

The FBIA suggests that the food system is not agile or responsive to the needs of importers and local manufacturers. The food regulatory system needs to improve to support a growing sector and maintain innovation.

Q12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

The FBIA does not support the objectives of FSANZ to be broadened to include sustainability.

Q13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

The FBIA does not support the inclusion of sustainability.

Q14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable

The FBIA supports FSANZ's activities to better recognise and incorporate indigenous culture and food expertise as part of the current review, as more and more indigenous foods, ingredients, and flavourings are being used more than before.

Q15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

The FBIA suggests there may be opportunities for a greater use of traditional foods and would support research to identify these opportunities, respectfully.

Consideration must be given to the current food regulatory system which defines many of these foods as novel foods which may impacts economic growth opportunities.

Q16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

The FBIA considers this would have a positive outcome. Risk-based assessments coupled with proportionate regulatory responses are essential for best practice regulation.

The components of Option 2:

1. *Better use of FSANZ's other regulatory instruments (guides and codes) could increase the system's agility and responsivity to change*.

   Support.

2. *Implementing a decision-making tool may lead to better uptake of the full suite of instruments available to FSANZ*.

   Support.

3. *Risk could drive processes in relation to applications and proposals*.

   Support.

4. *Decision-making arrangements could allow for delegation by the FSANZ Board and Food Ministers' Meeting.*

Support.

5. *The Act could provide for FSANZ to accept risk assessments from overseas jurisdictions.*

Support.

6. *The creation of new pathways could expedite low-risk amendments to food standards.*

Support.

7. *An additional pathway to bring very low risk products (including additives and ingredients) to market could support greater economic opportunities for food businesses.*

Support.

Q17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

The FBIA would support *in principle* the delegation of decision making to the FSANZ board for amendments which are low risk. The FBIA would need to have awareness of what defined *low risk*, and there would need to be a provision for an appeals process, for a decision to be taken to the Food Ministers Meetings.

Q18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Codes of Practice or Guidelines are frequently used in various sectors.

Q19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

The FBIA cannot provide data.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

The FBIA does not have any data.

Q21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The FBIA may *in principle* support the concept of building in flexibility through the creation of bespoke regulatory sand boxes as positive but would need greater clarity and detail of the concept and tangible benefits**.**

Q22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

The FBIA has no comment currently.

Q23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The concept of FSANZ as a hub of food safety intelligence to drive future regulation is considered by the FBIA as positive **in *principle*** but we would need to better understand the concept.

Q24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

The FBIA supports the collection and analysis of this type of data.

Q25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The FBIA ***in principle*** would support the collaboration with other agencies for intelligence-led decisions.

Q26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

The FBIA supports the principle of cost recovery but it must be justified, appropriate, and proportionate.

Q27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The FBIA supports FSANZ moving to a smaller, skills based Board as per the draft RIS. This is consistent with business management practices and can result in a more efficient and effective Board.

The FBIA has concern with extending FSANZ's functions. It is essential FSANZ fulfil their core role - being the food regulatory agency for Australia and New Zealand.

The FBIA does not support a change to the FSANZ Act which would require the FSC to periodically review every standard due to sunsetting provisions. Amendments occur frequently.

Q28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

The FBIA suggests that there may be few likely risks to stakeholders with the proposed changes in option 2, but all risks need to be identified.

Q29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

No comment.

Q30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

The FBIA does not have data.

Q31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

The FBIA would support a well-funded and resourced food regulatory system. The issue of cost-recovery from industry is not new and would need to be researched more to fairly assess whether it should be considered.

The FBIA does not support cost recovery for amending the FSC or for the limited expansion of activities in scope.

Q33 How often do you currently engage with the food regulation system through making applications to change food standards?

The FBIA very rarely engages with members who are making applications to change the food standards.

Q34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

The FBIA is an industry association with a primary focus on importing food and beverages. The FBIA have a respectful relationship with FSANZ allowing a positive experience when representing members. The states and territories are more challenging to engage with as they each have their own view.

FRSC and ISFR are more remote and difficult to engage with. They have shared more information over recent years but are less connected.

International standards have been established through international intergovernmental agencies, notably Codex Alimentarius and the World Health Organization's Joint Expert Committee on Food Additives. Other jurisdictions also have thorough and reliable processes for risk assessment in food regulation such as the Health Canada and the European Food Safety Authority.

International standards and risk assessments are becoming more globally recognised and accepted reducing the cost to industry while ensuring the security and assurance of a food. FSANZ should consider a more streamline approach to applications that allow international data from a credible authority when assessing applications.

Q35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

The FBIA supports the concept of the availability of multiple pathways for industry to seek amendments to the FSC. The FBIA supports the concept of industry-led pathways to bring new products to market.

A proposal was discussed at the FSANZ Novel Food Standards Development Advisory Group working on P1024 Revision of the Regulation of Nutritive Substances & Novel Foods that included pathways for industry self-substantiation (technical), with reference to overseas approvals, and a substantial history of safe use.

The options discussed at that time were:

- Industry providing FSANZ with full pre-market assessment supported by risk assessments and approvals made by relevant competent authorities.
- Industry providing FSANZ with Australian risk assessments and approvals.
- Self-substantiation by industry for foods that have vast credible research and data, covered by an industry code of practice or similar.

The suggested framework would create a more agile and risk-based approach for assessing applications.

The current processes for developing and amending the FSC are restrictive and very prescriptive and places a burden on industry through increased costs, and reduced competitiveness.

Option 3

Q36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The FBIA would support an agency that coordinates recall incidents and responses, not just a body that collects and disseminates data. It would be essential to ensure legislation and arrangements support the change.

Q37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

The FBIA has no information.

Q38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

The FBIA supports FSANZ coordinating food recalls/incident responses in Australia. New Zealand already have a single enforcement agency.

Q39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

The FBIA supports FSANZ providing comprehensive guidance about food standards. FSANZ will need to ensure the guidance is in alignment with the jurisdictions to eliminate misinformation and confusion.

Q40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

The FBIA has no data.

Q41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

New Zealand have one enforcement agency, whereas Australia have several. FSANZ can be the single central enforcement body for the FSC. It is not uncommon to get the same challenge from several states on the same misunderstanding of the code, which results in the need to reply multiple times on the same challenge. Whereas if it comes from the one enforcement agency then you only have to manage the matter once.

Q42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

The FBIA can see potential in FSANZ taking on the enforcement position particularly around interpretation and comprehensive advice re the FSC, recalls and to some degree enforcement (policing). However, the states and territories would be better placed to police, with a change to legislation, allowing FSANZ to interpret the rules Code. This would be more appropriate if it only applied to Australia. This would establish greater clarity and consistency.

Q43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

The FBIA has no data.

Q44Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select only one item Positive Negative Neutral

Australia and New Zealand are separate competent authorities in the international trade community. The FBIA sees greater opportunity in having aligned but separate voices.

The FBIA would encourage FSANZ to adopt international standards such as those in the Codex Alimentarius, through a robust consultative process with industry. FSANZ should also justify why it does not accept those standards, whether based on technical or scientific reasons.

Q45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

The FBIA has no information.

Q46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

The FBIA would need more information to assess the suitability of applying cost recovery.

Q47 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not

Not completely. We need to have a robust, flexible and agile system now that can evolve to include the aspirations previously shared. Accepting risk assessments from globally recognised bodies, harmonisation or alignment of standards, confidence in understanding the Code interpretation are just some of the activities that can support innovation, emerging technologies and trade.

Thank you for your consideration of the FBIA's comments. The FBIA welcomes further opportunities to contribute.

Yours sincerely

Carolyn Macgill
Executive Officer

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 18:34:15**

About you

What is your name?

Name:

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Consumer Healthcare Products industry

What is your organisation?

Organisation:
Consumer Healthcare Products Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

CHP Australia is the leading voice and industry body for manufacturers and distributors of consumer healthcare products, which includes non-prescription medicines. We strive to advance consumer health through responsible Self Care. Our key priorities for the industry include improving health literacy, growing the consumer healthcare products industry and increasing access to medicines where appropriate.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

CHP Australia does not support Option 1 and the maintenance of the status quo. There are well identified policy problems that would benefit the consumer, the industry and
the regulator to resolve. Choosing to maintain the status quo would be a missed opportunity to streamline inefficient processes, to modernise the framework, and resolve long-standing issues.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

CHP Australia is generally supportive of Option 2 as this appears to provide scope to resolve significant policy problems and streamline processes without being overly onerous.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

This component is likely to have a positive outcomes for the consumer healthcare products industry as efficient regulatory systems reduce complexity. By improving the responsiveness and clarity of the food regulations the food-medicine interface should become easier to navigate with increased certainty.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

CHP Australia would be interested to observe the utilisation of regulatory sandboxes as a means to enhance innovation and responsive regulation within the Australian Department of Health.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

This component is likely to have a positive outcomes for the consumer healthcare products industry as efficient regulatory systems reduce complexity and uncertainty. By improving the responsiveness and clarity of the food regulations the food-medicine interface should become easier to navigate with increased confidence.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

This component has no obvious impact on the consumer healthcare products industry.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Increased clarity of the interpretation for food standards would contribute to greater certainty at the food-medicine interface. The provision of interpretive guidance and services that provide consistent advice into the correct application of food standards would likely be beneficial to industry.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

Enforcement activities do not appear to present the same difficulties in New Zealand due to management through a single agency (the Ministry for Primary Industries). The challenges experienced in Australia appear to be due to the split in responsibilities between States and Territories, and therefore the lack of consistent interpretation and approach (and resourcing) for enforcement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please:

This would likely be positive, as a centralised and consistent enforcement agency for Australia would improve compliance around the food-medicine interface. The exact approach to how this would be implemented, and the shift in responsibility from States and Territories to FSANZ would require detailed consideration and consultation, however the end outcome of a simplified and consistent approach to enforcement would likely warrant the work.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Option 2 with addition of components 2 and 3 from Option 3 present the best possible alignment with the draft Aspirations.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
CHP Australia submission Draft RIS FSANZ Act - final.pdf was uploaded

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Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement

CHP Australia is the leading voice and industry body for **manufacturers and distributors of consumer healthcare products**, which includes non-prescription medicines. We strive to advance consumer health through **responsible Self Care** and were previously known as the Australian Self Medication Industry (ASMI).

Our key priorities for the industry include **improving health literacy**, **growing the consumer healthcare products industry** and **increasing access to medicines** where appropriate.

CHP Australia does not represent products captured by the Food Standards Code, unless these are in some way subject to a Declaration under the Therapeutic Goods Act 1989 that determines the goods to be therapeutic goods. In this regard, our interest in this consultation is from the perspective of seeking the best management possible by various Government agencies of the Food-Medicine interface to ensure that goods are being supplied appropriately, that there is regulatory consistency, and the integrity of the quality, safety and efficacy controls for listed medicines are maintained.

Australia is in a unique position with the regulatory controls that we apply to complementary medicines (commonly called dietary supplements or herbal medicines) as in the majority of jurisdictions internationally these are sold as foods, whereas Australia predominantly captures these products in the medicines framework. Because of the fine lines of distinction between foods and medicines, or of supplemented food products and listed medicines more specifically, this becomes a difficult area for manufacturers, marketers and suppliers to negotiate to ensure that their products are being supplied in a manner that is compliant with the regulations. While all markets must deal with interface issues, the increasing interest in health claims for foods means that in Australia that distinction must be made between products that can have very similar ingredients, product formats and claims.

Our primary interest in this consultation on the draft Regulatory Impact Statement (RIS) for the Review of the Food Standards Australia New Zealand Act 1991 is to support measures that improve clarity and consistency of interpretation of food standards, the effective management of the Food Standards Code, and streamlined and effective enforcement processes when products and practices are non-compliant. We have collaborated with the Australian Food and Grocery Council (AFGC) in this regard, as they have greater insight in the day-to-day operation of the food regulations. We have reviewed the AFGC submission, and we are supportive of their recommendations into this draft Regulatory Impact Statement.

To reiterate some critical points, CHP Australia does not support Option 1 and the maintenance of the status quo. There are well identified policy problems that would benefit the consumer, the industry and the regulator to resolve. Choosing to maintain the status quo would be a missed opportunity to streamline inefficient processes, to modernise the framework, and to resolve long-standing issues. In contrast, while we support some of the components associated with Option 3, specifically around the intent to improve interpretation support by FSANZ and clearer enforcement pathways and actions (component 2 and component 3), as a regulated industry in a cost-recovered framework we see substantial challenges with the capacity, and suitability, for resourcing Option 3 in its entirety.

CHP Australia is generally supportive of Option 2 as this appears to provide scope to resolve policy problems and streamline processes. We also support further exploration of Option 3, component 2 and 3, to improve the consistent interpretation of standards and the enforcement pathways for products that are sold as finished goods, particularly packaged foods and supplemented food products with health claims, to improve regulatory consistency and consumer confidence. We do note that many of the enforcement issues experienced in Australia are not reflected in New Zealand, due to enforcement action managed by the Ministry for Primary Industries in that jurisdiction, therefore we are not recommending that FSANZ takes on enforcement action in both jurisdictions.

We do note questions raised in the draft RIS around cost-recovery and fee for service as means to further resource the agency. CHP Australia does echo some of the concerns raised by AFGC in this regard. AFGC note that it is often difficult to apply a fee for service where there is limited direct benefit to the applicant, such as in changing food standards codes that can be used by all other suppliers. This has been an ongoing struggle in the listed medicines area as the Therapeutic Goods Administration (TGA) has quite a high bar for access to the market, with substantial fees applied to seek availability of a new ingredient, which has traditionally then become available for all other suppliers and limited avenues for the applicant to recover those costs. While the TGA has recently introduced much-welcomed new mechanisms that enable some market protection, these are difficult to design and complex to administer. While it is critical to have a suitably resourced agency to administer an effective regulatory system, as well as support capacity for public health activities, in some instances a cost-recovery or fee for service model can impinge on the framework, limit innovation, and introduce additional management costs in the future to redress unintended impacts. CHP Australia recommends that these aspects are given due consideration in the outcomes of this consultation.

CHP Australia remains available to provide additional comments or assistance as required.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 20:00:53**

About you

What is your name?

Name:
Emily Fuller

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
New Zealand Beverage Council

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:
NZ

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The NZBC agrees with the three policy problems identified in the RIS. The problems stated highlight the inefficiencies and inconsistencies with standards setting and best practice regulation that exist within the system. Addressing these issues through a combination of the reform ideas suggested in the RIS would alleviate the regulatory burdens currently imposed on the non-alcoholic beverages industry.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Sustainability is an integral part of the our member's strategic plans. However, the NZBC does not support the inclusion of sustainability as a priority for FSANZ under the Act, as there are already a number of other regulatory agencies currently responsible for sustainability outcomes.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative – the impact of this option would result in the current issues with the food regulatory system continuing to impose a regulatory and cost burden on the non-alcoholic beverages industry, trading both domestically and internationally.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
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Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
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Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC is supportive of the elements in Component 1, noting specifically recognising trade as a core goal. However, the NZBC and its members do not support further clarifying or expanding FSANZ's goal of public health protection or the inclusion of sustainability as a priority.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The NZBC and its members are committed to environmental, health, economic and social impacts of their businesses and keep sustainability as a core value. However, the NZBC does not support the inclusion of sustainability as a priority for FSANZ. Expanding the interpretation of public health and safety as it relates to sustainability, introduces an additional complexity to the already strained operations of the FSANZ.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

The NZBC would support wording to the effect of 'recognise indigenous culture and food expertise' as this would not interfere with the New Zealand Governments obligations of the Treaty of Waitangi.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC supports the proposal in Component 2 to facilitate risk-based approaches to develop or amend food regulatory measures. The non-alcoholic beverages industry has indicated strongly that there is a need to expedite the approval process of variations to the Code, specifically for low-risk applications that are similar to those already approved by FSANZ or equally those that are widely accepted across international jurisdictions.

The NZBC supports achieving this through leveraging other regulatory instruments and developing a risk framework to streamline pathways for low-risk amendments, ad proposed by the draft Regulatory Impact Statement. However, the NZBC does not support the proposed delegation of decision making.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The NZBC and its members do not support delegation of decision-making from the Food Minister's Meeting for the following reasons:
i. The point at which Food Ministers decide upon approval of regulatory measure is between steps 9 and 10, the last stage of the FSANZ application/proposal process. The draft RIS has clearly identified areas in the earlier stages of the process where reform could lead to improved efficiency and effectiveness of FSANZ's operations. Introducing a streamlined pathway for low-risk applications and adopting risk assessments from overseas jurisdictions (with minimal checks) would have a much greater impact on reducing the burden on FSANZ's resources.
ii. The current decision-making process is well-balanced. FSANZ's role should continue to solely focus on assessing risk to public health and safety, standard setting, and providing recommendations to the Food Ministers' Meeting based on current evidence. It is beyond FSANZ's or any other Department official's role to assess risk and be the final decision-maker for food regulatory measures that have a much greater impact on individuals than public health and safety. This balance of power serves as a check between Ministers and FSANZ and is seen as an important balance.
iii. Any delegation of decision-making to other Department officials risks relinquishing of FSANZ's resources to other priorities that are misaligned with those of FSANZ's statutory functions in s 18.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

In principle, the NZBC supports the further development and updating of codes of practices and guidelines to assist businesses in interpreting the Code with the provision that this is done collaboratively and involve consultation with stakeholders (including industry).

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The NZBC does not support the introduction of regulatory sandboxes as an approach to resolve the policy problems identified in the RIS, pertinent to improving the efficiency of FSANZ food regulatory process. Our view is that this approach may only be a temporary solution and requires further information to understand its advantage to industry.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC supports, in principle, Component 4.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

The NZBC is supportive of providing for FSANZ to be more proactive and well-equipped to better detect and manage risks and undertake regular reviews of food standards. However, we hold the view that this is not required to be legislated under the Act.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC is generally supportive of Component 5, particularly if joint agenda sitting between FSANZ and the Food Ministers' Meeting is implemented. Additionally, the NZBC is supportive of FSANZ's earlier involvement with FRSC to understand responsibilities and minimise duplication of efforts, as we believe this could provide stakeholders with greater transparency of policy decision-making process and technical expertise that FSANZ provides to the FRSC.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC is supportive of Component 6 to streamline FSANZ's governance and operations through creating a more skills-based Board. The NZBC holds the view that an increase in industry representation is necessary to be introduced to the Board, particularly those that work directly in the food and beverage industry, to apply the practical knowledge of the impact on businesses if a food regulatory measure is to be approved.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The NZBC is generally supportive of Option 2 with the exception of delegation of decision-making, which we identify as a risk for approvals of applications that have no ministerial oversight.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The NZBC and its members do not support the attraction of fees borne by industry for the provision of interpretive advice.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

NZBC is of the view that any additional cost-recovery for activities will increase the already existing disparity between larger and small to medium businesses.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The NZBC and other food and beverage industry organisations regularly engage with the food regulatory system. We specifically do not encounter barriers in the process. However, the difficulties we face is mostly regarding delays in proposals, which we understand is due to the resource constraints FSANZ is currently experiencing. With regards Member companies, the greatest barrier would be the onerous complexity of the application process, whereby some businesses actively choose not to participate as they see no return on in investment. This lack of engagement by industry is because the application process is a deterrent.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Yes—NZBC members are more likely to engage with the food regulatory system through pathways suggested in the draft RIS like expedited pathways for low-risk amendments to the Food Standards Code and opportunity to collaborate with FSANZ in developing codes of practices and guidance documents to assist in interpreting the Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The NZBC is not supportive of Option 3, Component 1 as we do not consider this to be a priority of FSANZ’s core objectives.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The NZBC strongly supports further funding provided to FSANZ to give greater guidance on food standards. FSANZ has the expertise to provide interpretive advice but is under-resourced to do so.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

The NZBC does not support FSANZ taking on enforcement activities and that enforcement could be more appropriately supported through the provision of interpretative advice and guidance material for industry.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

The NZBC is not supportive of a single, bi-national regulator.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The NZBC considers the single voices of both Australia and New Zealand in their global presence are important as they are competitors and have differing issues.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Yes.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Please see attached letter with additional comments.

Upload any supplementary information here. :
NZBC letter of support- FSANZ RIS 2021.pdf was uploaded

18 May 2021

NEW ZEALAND BEVERAGE COUNCIL SUBMISSION: REVIEW OF THE FOOD STANDARDS AUSTRALIA NEW ZEALAND ACT 1992- DRAFT REGULATORY IMPACT STATEMENT

INTRODUCTION:

The New Zealand Beverage Council (NZBC) is the industry association representing New Zealand's non-alcoholic beverage sector. Our members are the brand owners, manufacturers, bottlers and suppliers of New Zealand's juice, carbonated drinks, flavoured-dairy and bottled water brands.
Our membership is made up of a wide range of companies operating in New Zealand – from some of the largest multinational brands in the world through to some the country's smallest boutique producers, as well as those companies that provide a wide range of goods and services to those companies.

We frequently engage with Food Standards Australia New Zealand (FSANZ) and other regulatory bodies involved with the regulation, safety, sustainability and sale of food and beverages both domestically in New Zealand and exported internationally.

We are writing to make some additional comments on the proposed draft Regulatory Impact Statement (RIS) and demonstrate our strong support for the submission presented by our Australian counterparts, the Australian Beverages Council (ABCL).

THE NZBC AGREES WITH THE THREE POLICY PROBLEMS IDENTIFIED IN THE RIS:

The three policy problems stated in the draft Regulatory Impact Statement are supported by the NZBC and our members. We hold the view that these problems highlight the inefficiencies and inconsistencies with standards setting and best practice regulation that exist within the system. The NZBC holds the view that addressing these issues through a combination of the reform ideas suggested in the RIS would alleviate the regulatory burdens currently imposed on the non-alcoholic beverages industry**.**

THE NZBC HAVE STRONG OPPOSITION TO THE INCLUSION OF DELEGATION OF DECISION-MAKING POWER FROM THE FOOD MINISTERS' MEETING UNDER PROPOSED OPTION 2, COMPONENT 2:

The NZBC and its members do not support the delegation of decision-making from the Food Ministers' Meeting to the FSANZ Board or any Department officials. To be clear, this is not for a lack of trust in the FSANZ board or their capabilities to make decisions. The NZBC strongly believes that there is a role for both political decision-making and science and evidence-based decision-making. Decisions that are made during the Food Ministers' Meeting compared with those evidence-based decisions made at the FSANZ Board level serve different purposes for the industry. We believe that this distinction provides a form of checks and balances that is integral to the system continuing to work effectively.

The NZBC would like to also note that we are strongly supportive of the position taken and reasonings addressed by the ABCL in their submission as it relates to this issue. The ABCL position is outlined below:
The ABCL does not support delegation of decision-making from the Food Minister's Meeting for the following reasons:
i. The point at which Food Ministers decide upon approval of regulatory measure is between steps 9 and 10, the last stage of the FSANZ application/proposal process. The draft RIS has clearly identified areas

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in the earlier stages of the process where reform could lead to improved efficiency and effectiveness of FSANZ's operations. Introducing a streamlined pathway for low-risk applications and adopting risk assessments from overseas jurisdictions (with minimal checks) would have a much greater impact on reducing the burden on FSANZ's resources.

ii. The current decision-making process is well-balanced. FSANZ's role should continue to solely focus on assessing risk to public health and safety, standard setting, and providing recommendations to the Food Ministers' Meeting based on current evidence. It is beyond FSANZ's or any other Department official's role to assess risk and be the final decision-maker for food regulatory measures that have a much greater impact on Australian lives than public health and safety.

iii. Any delegation of decision-making to other Department officials risks relinquishing of FSANZ's resources to other priorities that are misaligned with those of FSANZ's statutory functions in s 18.

iv. Including Ministerial oversight provides a final check and balance to the approval process.

Other proposals under component 2 that focus on facilitating risk-based approaches to develop or amend food regulatory measures are supported by the NZBC and are viewed as more effective measures to improve the efficiency of the food regulatory system.

NZBC AND ITS MEMBERS SUPPORT THE SUBMISSION MADE BY THE ABCL

The New Zealand Beverage Council and the Australian Beverages Council share several mutual members and have a high level of engagement on regulatory issues that have significant consequences to member's respective businesses.

The NZBC would like to acknowledge the submission made by the ABCL and are confirming to FSANZ our formal support and alignment to their views presented in that submission. The NZBC has also answered the relevant questions as part of our own submission.

CONCLUSION:

Thank you for taking the time to consider the views of New Zealand's non-alcoholic industry. We hope you have found these comments useful. Please do not hesitate to contact me should you require any further information.

Yours sincerely,

[redacted]
Emily Fuller
GM Public Affairs
New Zealand Beverage Council
[redacted]

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 20:40:36**

About you

What is your name?

Name:
CAROLE INKSTER

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
NZFGC

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over $40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over $34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

1. NZFGC considers the stated policy problems adequately cover concerns with the regulatory framework presented by the FSANZ Act 1991 (the FSANZ Act) and the operation of FSANZ under the FSANZ Act. NZFGC largely agrees with the description of the problems but NZFGC has some concerns relating to:
• Policy Problem 1 – public health protection; food sustainability; recognition of indigenous culture and food expertise; structural tensions within FSANZ's objectives in relation to food Ministers' decisions; legislated processes for changing food standards and decision-making;
• Policy Problem 2 – Food Ministers' Meeting-directed projects
• Policy Problem 3 – Food recall; enforcement; food-medicine interface; extending influence internationally.

2. These concerns are noted within this submission in the responses to the questions that follow.

3. In previous consultations concerning the FSANZ Act, we stressed the importance of defining "public health" separately from "food safety" which is the paramount objective. However, we do not want to see pursuit of a "better" definition of public health holding up the FSANZ Act review because the Review has the opportunity to clarify and re affirm FSANZ's core role as a standard setting body focused on consumer safety as it was originally designed to do. We believe FSANZ's core mandate should remain one that focuses on consumer safety and the safety or appropriateness of ingredients or additives in our food.

4. 4. We nonetheless support FSANZ being more than a standard setting body but not want to see it duplicating or being the vehicle for other public health activities that more properly sit within health portfolios. We would this as ‘scope creep’.

5. We also comment later in this submission (Response to Question 11) on the importance to NZFGC of including “trade” as a principal objective and, in a hierarchy, ranked equally to the defined public health.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

6. NZFGC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues and are doing so now. For example, the Discussion Paper identifies the role of the New Zealand Commerce Commission in relation to sustainability claims (p27) but there are other agencies involved. It is simply not correct to state (p27) that industry can make unregulated claims in the current environment as the Fair Trading Act 1986 appropriately covers such claims.

7. Food companies are generally embracing sustainability in their operations to a greater or lesser degree partly as good corporate citizens and partly in response to consumer expectations.

8. The New Zealand Ministry for Primary Industries (MPI), Ministry for the Environment (MfE), Department of Conservation (DoC) and Ministry or Business, Innovation and Employment (MBIE) all have roles in the area of sustainability. Australian Government agencies are equally involved in sustainability.

9. NZFGC considers it an unnecessary diversion of resources for FSANZ to also have a formal role. It might well dilute the focus on food safety and would certainly slow down/delay the process of amending the Australia New Zealand Food Standards Code (the Food Standards Code) and make the current application process even more complex by requiring the inclusion in applications of sustainability matters. It would also compromise resourcing and funding on other higher priority food safety areas covered under the draft Regulatory Impact Statement.

10. FSANZ should still participate in discussions and responses to issues (such as with PFAS (per- and poly-fuoroakyl substances)) which have intermingled environmental, human health and potentially food safety issues. This is not only because of obligations under Part 1.4 of the Food Standards Code which deals with Contaminants and Residues but noting also that where limits have not been set, there are still requirements imposed in the applicable Food Acts that food must be safe and suitable for human consumption. Nonetheless FSANZ should not have a formal role around sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

11. In the New Zealand context, the Crown’s obligations to the Treaty of Waitangi/Te Tiriti o Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasises the role of the public service in supporting the partnership between M■ori perspectives and the Crown under the Treaty of Waitangi and the importance of incorporating M■ori perspectives and M■tauranga M■ori (M■ori system of knowledge) at all levels. This mandate, by principle, includes any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

12. The system is not broken but there are areas that are creating drag and barriers to maintaining and encouraging the further development of a vibrant industry sector across the region.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

13. NZFGC responds from an industry perspective that the current arrangements are creating significant and compounding loss of competitiveness. The most recent example of this is in relation to Application A1155 concerning human milk oligosaccharides (HMOs). The particular HMOs that were the subject of Application A1155 have been approved in over 70 jurisdictions globally with none of the time limits or constraints that Food Ministers decided were necessary for Australia and New Zealand. Food Ministers were well aware of the impact on innovation, competitiveness and trade of their decisions since NZFGC had alerted to them to the consequences well in advance of their decision. The uncertainty that their time-bound decision introduces has an incalculable cost on competition and economic growth.

14. The legislated processes for changing food standards and decision-making are inflexible, costly and anti-innovation, contributing to a stifling of economic growth and the further development of the Australian and New Zealand food industry.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

15. NZFGC does not hold data that would help to quantify the cost of delays when bringing products to market through the current process. We would suggest there may be data on lost opportunity as a whole eg the value of the cross-border eCommerce related to HMO-containing products that is being met by the EU (where HMO approved). Additionally, we would point to the cost to consumers and innovation as 'lost opportunities' because businesses are choosing not to participate in bringing products to market due to the regulatory burden imposed on businesses and potentially, the otherwise greater risk to return on investment.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

16. NZFGC is not aware of other costs and benefits that might be considered as part of the impact analysis although there should be a value applied to the current system being well respected even though it is outdated and no longer keeping pace with the rate of change in the overall food environment.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

17. NZFGC is not aware of any data that might assist in quantifying the magnitude of these costs and benefits.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

18. See response to Questions 4 to 6.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

19. N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

20. NZFGC is generally supportive of this component but strongly advocates that facilitation of trade is added to FSANZ objectives but not sustainability.

21. The Draft Regulatory Impact Statement lists several elements that could be amended for which there are no questions and we comment on these as follows:

Aligning wording around public health protection across section 3 and section 18
22. NZFGC agrees with alignment but considers that food safety should always be the highest priority. We also consider that trade goals should be given equal priority to public health (appropriately defined) after food safety. For this reason, we support wording that clearly separates food safety from public health objectives. This also acknowledges the existing hierarchy of objectives in the FSANZ Act currently.

Expanding the objectives of FSANZ to recognise trade as a core goal
23. NZFGC strongly supports such an expansion and, as noted above, having separated food safety as the prime objective, would list public health protection and trade as subordinate but equal objectives.

Establishing criteria to be met for Ministers to request a review
24. NZFGC strongly supports setting criteria that Ministers must meet before requesting a review.

Amending Act to ensure FSANZ has the breadth of statutory functions required to effectively deliver on its objectives
25. NZFGC considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, a role defined for FSANZ regarding food fraud, if this were to proceed, would need to ensure minimal

overlap with competition watchdogs and jurisdictional enforcement agencies including police.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

26. See NZFGC's response to Question 2. In summary, NZFGC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues. Many food companies are embracing sustainability in their operations. NZFGC considers it an unnecessary diversion of resources for FSANZ to also have a formal role in sustainability.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

27. NZFGC believes that economic opportunities for Australian and New Zealand industry from sustainability will be captured over time WITHOUT FSANZ's involvement but rather from broader drivers such as consumer demand and expectations, climate change legislation, certification etc. An involvement of FSANZ could generate costs through diverting scarce resources and diverting focus from food safety, public health protection and trade objectives.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

28. NZFGC is supportive of FSANZ's activities better recognising indigenous culture and food expertise.

The right framing
29. Whether the "framing" is right will depend on how the recognition is incorporated. We would, for example, support wording such as "recognise indigenous culture and food expertise" as we do not believe this would the New Zealand Government's obligations. For this, the FSANZ Act should include a Treaty of Waitangi clause along the lines as is included in the New Zealand Conservation Act 1987:

"4 Act to give effect to Treaty of Waitangi
This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi." [1]
[1] https://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=ta_act_C_ac%40ainf%40anif_an%40bn%40rn_25_a&p=4

30. The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty) should also include a Treaty of Waitangi clause. This might, for example, be along the lines of Article 16.7 in the Protocol to amend the Agreement between Singapore and New Zealand on a Closer Economic Partnership (1 Jan 2020) under Chapter 16:

"Article 16.7: Treaty of Waitangi
1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. …" [2]
[2] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-singapore-closer-economic-partnership/cep-text/#bookmark1

Differences between the Australian context and the New Zealand context
31. The key difference between the New Zealand context and the Australian context is that, as the foregoing sets out, the New Zealand Government has a constitutional obligation in relation to Maori under the Treaty of Waitangi. This would be important to consider.

Changes required to the FSANZ Act to enable recognition
32. As noted above, amendment to the FSANZ Act through a clause that provides the FSANZ Act to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. Changes relating to recognition of Australian indigenous peoples and culture are best provided by Australian submitters.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

33. In a Report commissioned by the Reserve Bank of New Zealand and published in 2020 [3], Te ■hanga M■ori 2018: The M■ori Economy 2018, the M■ori economy was put at $68.7 billion, up on the previous 2013 estimate of $42.6b. M■ori are a young population and growing fast and skilled M■ori are moving into entrepreneurship. There are over 100,000 more M■ori in the workforce today than there were eight years ago and more and more are the engine of growth in the economy of Aotearoa. The assets and businesses of M■ori employers are spread broadly across many sectors, including the primary industries, where assets include $7.5b in agriculture ($1.6b in dairy farming), forestry, and fishing. Each of these has the potential for economic opportunities for traditional and non-traditional goods in the broader food and beverage market.
[3] https://www.rbnz.govt.nz/research-and-publications/research-programme/te-ohanga-maori-2018

34. Some examples:

a) Ngaa Rauru Kiitahi iwi started the Kaitahi As One brand several years ago to provide work for its people. The first product it launched, which has been incredibly successful to date, was its frozen smoothy drops. this is about how such a successful startup takes indigenous ingredients and creates a food worthy of all these accolades. “We are so proud that through our brand, we are able to bring some old M■ori traditions into the modern world and deliver a product which bolsters health outcomes through good nutrition and provides jobs in our small community”, Arohania Owen, Iwi working group lead, says.

b) The Australian company, Vitonic brand, choose to work with FoodSouth Otago on the development of the products because of their affiliation with the University of Otago, which had delivered some solid work on the health benefits of currants and berries. Sean Cunial, Rouge Managing Director knew he wanted a product that was highly functional and used geographically based botanicals – eg kawa kawa and Kakadu plum (indigenous to New Zealand and Australia). The challenge was to incorporate known benefits into a natural, concentrated drink which had minimal ingredients and low sugar. The result was a gluten, preservative, caffeine free vegan friendly drink with no added sugar made entirely from natural ingredients.

35. A key barrier for economic opportunities for indigenous food and beverages is the difficulty presented by the food regulatory system for permitting traditional foods to enter the market since many are considered novel foods and few (if any) have successfully traversed the novel foods requirements.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

36. NZFGC is generally supportive of the elements in this component but notes ‘risk’ and the ‘hierarchy of risk’ is not defined in the draft Regulatory Impact Statement.

37. In relation to elements not covered by questions the following is provided:

Implementing a decision-making tool to determine instrument that can most appropriately deal with the identified problem
38. NZFGC is supportive of tools that contribute to determining the instrument that can best assist with dealing with an identified problem. However, NZFGC considers there are other elements that should be prioritised ahead of this element.

Risk could drive processes in relation to applications and proposals
39. It is not clear how this proposal would operate but approaches that would streamline the application and proposal process are strongly supported in principle.

Creation of new pathways to expedite low-risk amendments to food standards
40. As with the previous proposal, it is not clear how this proposal would operate but approaches that would expedite amendments to food standards are supported in principle. We note that there is precedent in relation to flavours (the definition of flavours in the Food Standards Code accepts any flavours from several sources: Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers’ Association of the United States; Chemically-defined flavouring substances, Council of Europe, November 2000; Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1; 21 CFR § 172.515) and water guidelines in Australia only Standard 2.6.2—3 which references the Guidelines for drinking-water quality, 4th edition incorporating the first addendum, 2017, WHO, Geneva.

41. NZFGC supports new pathways including adoption of international standards but we do not support automatic adoption without the ability for stakeholders (including industry) to comment on proposed new measures. This is important to maintaining relevant and appropriate measures for Australia and New Zealand. NZFGC supports a minimal check approach which requires further discussion.

Additional pathway to bring very low risk products to market
42. 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. NZFGC also continues to support industry self-substantiation of bringing low risk products to market. MPI currently supports industry very well in preparing and submitting self-substantiated general level health claims as distinct from what is happening in Australia where there is little or no support.

43. One of the recommendations under this section of the draft Regulatory Impact Statement (page 58, second bullet point) suggests ‘post market monitoring and surveillance to ensure ongoing compliance or address identified safety risks’. We have reservations about the utility of this since safety risks should have been identified to assess the products as eligible for the pathway. – what is being proposed is potentially flawed if safety risks are identified post market.

44. Abolition of the pathway for high level health claims – The reasons why the high level health claims pathway is not being used is not stated but we suspect this may be complexity and cost. If this is the case, then NZFGC is generally supportive of abolishing the pathway conditional on high level health claims still being available and an alternate pathway being identified. This is because there are a number of pre-approved high level health claims in the Food Standards Code and there may eventually be an application in the future.

45. We also suggest that FSANZ might raise a proposal to bring into the Food Standards Code those high level health claims that have been assessed by EFSA and approved by the EU since Standard 1.2.7 was completed. Such a process could leverage the risk assessments undertaken by EFSA.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

46. NZFGC supports decision-making being delegated to the FSANZ Board conditional on appropriate safeguards and checks being included to control the extent of delegation and limit it to lower risk areas of activity. These might be in the form of pre-defined criteria so that decisions are not made on a case-by-case basis thereby eroding the potential benefits. After two decades of operation, it is very clear that Minister’s should not be delving into the minutiae of the likes of food

additives, processing aids or low risk labelling and composition matters. These matters should be delegated along with minor adjustments to Standards and technical amendments.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

47. NZFGC considers Codes of Practice or Guidelines would be beneficial and could also be used to address ambiguity within parts of the Code. NZFGC would want to see these as collaborative developments featuring consultation provisions. We would also support partnering with other industry and non-industry agencies that might have expertise in the subject area to contribute to development. Some areas that could benefit from Codes of Practice or Guidelines include:
• microbiological measures
• processes related to novel foods and nutritive substances.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

48. NZFGC has not been able to identify any data on the cost of compiling evidence to support a comprehensive risk assessment by FSANZ.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

49. This is challenging to quantify given it includes elements such as the debilitating effect of loss of innovation, time to get products to market and loss of international competitiveness. NZFGC suggests that, as a starting point, the average cost of paid applications would be useful to assist with quantification of potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments.

50. We note this is limited to risk assessments and we support this limitation.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

51. NZFGC is generally supportive of this component but more detail is needed to assess how this proposal would be applied. While the detail of regulatory sandboxes should not be pursued at the expense of substantial reforms in other areas, the facility might be included in the amendments and the detail developed later.

NZFGC considers that development of this concept should be a secondary priority to other amendments to the FSANZ Act that have the opportunity to deliver tangible benefits with greater immediacy and certainty. In any event, safety should be an imperative under this framework.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

52. NZFGC is aware of technologies and expertise that is available to New Zealand businesses through the Food Innovation Network (which includes five open access food and beverage production facilities). The Food Innovation Network could be considered a sandbox facilitator in so far as the products developed with the Network might be tested in the market for demand. The processes and product development in these facilities could also provide an indication of the range of examples that might utilise regulatory sandboxes. These include that the production runs are contained, small and particularly assist small to medium sized businesses. Some examples are:

a) The Australian-based company, Nu-Mega Ingredients, had a product innovation it wanted to take from the R&D concept stage to small batch commercialisation. Since July 2019, Nu Mega had been working with the FoodBowl on scaling up the manufacturing of a novel emulsion technology developed by Nu Mega containing DHA (docosahexaenoic acid), an Omega 3 fat, from an algal source. The double-emulsion technology is specifically designed for DHA fortification of ultra-heat treated (UHT) beverage products. The patented technology was refined, trialled and was producing a product at the FoodBowl in semi-commercial quantities.

b) Ananda knew its sausages were not like any other – the ingredients and methods were unconventional for a traditional product like a sausage. It needed to find a way to take what was a very manual process and turn it into a commercially viable one. This was achieved and currently each batch produces 180kgs versus the 40kgs he used to make. Another challenge many small businesses face on the journey to market is having the ability to commit to the minimum quantities a contract manufacturer requires to produce the product. FoodSouth provides the facilities to do small-scale manufacturing (to help confirm demand) and also do the technical work so when the client goes to a contract manufacturer, the scale-up is much more seamless.

53. Another area that might utilise regulatory sandboxes could be any relevant work emerging from the New Zealand Food Safety and Science Research Centre (NZFSSRC).

54. Another alternative might be to allow product to be brought into the market whilst a request for an urgent application was processed.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

55. NZFGC is generally supportive of this component but there are reservations as noted in the response to the following question.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

56. NZFGC is generally supportive of FSANZ collecting data that could be consolidated and communicated. NZFGC is not certain this needs to be legislated.

57. This Component also proposes that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards. NZFGC supports FSANZ being resourced to undertake reviews of food standards but that the standards to be reviewed should be prioritised to ensure standards are not reviewed for the sake of review – it should not be a 'tick the box' approach across the Food Standards Code. There should also be a consultation process provided for the priority ranking to ensure stakeholders are involved in the review programme.

58. Equipping FSANZ to coordinate food safety research across Australia and to develop strategic relationships with New Zealand food safety research entities is supported. This co-ordination is undertaken virtually to a great extent in New Zealand to ensure that agencies retain control over their research programmes but that duplication is avoided and gaps can be identified and addressed.

59. 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. Both countries compile nutrition data although we note New Zealand's data is so out-of-date as to have questionable utility. In relation to food safety data, all jurisdictions maintain food safety databases and New Zealand's are collected under statute and unlikely to be shared. More information and research around this proposal is required.

60. In relation to FSANZ collating and creating consumer-facing food safety education materials, NZFGC would support this if FSANZ receives additional resourcing sufficient to cover this activity in addition to its other activities and so long as it did not duplicate New Zealand's work in this area. Therefore, it may also be appropriate for this activity to be limited to Australia.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

61. NZFGC is generally supportive of this component if it was independently resourced.

FSANZ and the Food Ministers' Meeting could undertake periodic joint agenda-setting to agree on proposals on which to focus
62. NZFGC considers an annual or biannual agenda item on the Ministerial Meeting agenda prepared by FSANZ, to provide Ministers with the opportunity to comment on the prioritisation, would be appropriate. However, since Ministers have political affiliations and membership regularly changes, it is likely that their interests in the FSANZ work programme could change also. In such a circumstance, and to ensure some stability over time, criteria for setting and changing the programme around proposals would be critical.

FSANZ could partner with other government [stakeholders] to make intelligence-led decisions and reduce duplication of efforts
63. In relation to the prospect of FSANZ partnering with other government stakeholders reference is made to reducing 'fragmentation across the system'. It is not clear what fragmentation is referring to. The suggestion is that earlier involvement with FRSC could be beneficial. FSANZ is well placed to have permanent membership of FRSC. Collaborating with enforcement agencies to identify emerging risks could be a role for FSANZ especially in Australia as well as the Implementation Sub Committee on Food Regulation (ISFR). In terms of activating the appropriate regulatory response, clearly the final decision rests with jurisdictions.

Enhanced collaboration around information sharing could also extend to international partnerships with overseas jurisdictions
64. NZFGC understands that this already occurs with Health Canada and with the European Food Safety Authority. There is no reason why other agencies, especially those in the Asia-Pacific Region, could not be included. However, servicing partnerships takes time and resources so consideration would need to be given about the appropriate number of such arrangements.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government
65. NZFGC would expect that FSANZ would be using its own data to inform its project work whether requested by jurisdictions or on its own volition. The request for project work from jurisdictions should be limited as this diverts resources from priorities for standard setting.

66. In relation to providing access to data to the general public including other researchers, so long as anonymity of source was preserved for industry and individuals to ensure commercial information was protected and privacy was preserved, there seems no reason why selected data should not be publicly available. Security of data should be a key focus of any such endeavour.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

67. NZFGC considers that access to data should be free of charge. If charges were applied, this may lead to issues around ownership and could be a disincentive to external parties providing FSANZ with data. FSANZ does not pay for the data provided to it.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

68. NZFGC is generally supportive of this component but has reservations about reducing Board numbers.

Legislation could support more efficient and effective governance
69. NZFGC supports legislative amendment to support more efficient and effective governance such as streamlining nomination and appointment processes for board members. We do not think that virtual or face-to-face meetings need legislative change as they have not to date. We consider a mix of virtual and face-to-face meetings to be efficient as was the practice with telecons prior to COVID 19.

70. NZFGC does not support a smaller Board. The scope of FSANZ's work is very broad and warrants a Board of 12 members noting that additional expertise can still be included on a case-by-case basis. With a predominance of virtual meetings, cost is limited to fees. We note this has been assessed as A$1.2m over 10 years.

71. In relation to investment into business solutions that might help staff work more efficiently, this would depend on form and cost. Again, we do not consider this requires legislative amendment but would support amendment if necessary.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

72. On balance, Option 2 would be positive for industry and would have flow-on effects for consumers through reduced costs of doing business. The key risk is for implementation generating unexpected consequences but this is the case for any legislative change. We have identified under each component, potential issues/risks which we recommend are addressed before legislation is drafted.

73. For industry there is the greater risk associated with components of this Option with some strongly supported by industry but a few recommended which should not proceed. We have not assessed the magnitude of these.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

74. NZFGC agrees with the assessment of costs and benefits of Option 2 presented in the Draft Regulatory Impact Statement and is generally supportive of this component. Benefits for FSANZ would also have flow-on benefits to industry in terms of operational agility, improved flexibility through new pathways to change food standards beyond the capacity savings which could be reallocated to other areas of priority work.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

75. NZFGC is not aware of data to assist in quantifying the magnitude of these costs and benefits.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

76. NZFGC does not believe the Act should provide for more of FSANZ's current work with industry to be offset through cost recovery mechanisms. It is not clear what 'types of applications' might be broadened for which FSANZ charges fees and, in any case, this would have the greatest impact on any notion of making

applications by small to medium businesses.

77. NZFGC does not believe the provision of interpretative advice should attract fees since this would mean unequal access to the legal system. when parts of the code are unclear and ambiguous and which require interpretive advice, then there shouldn't be a charge. Interpretive advice relating to the Code should be made available on the public domain so that others may benefit.

78. We note that public binding rulings made by both the Internal Revenue Department (IRD) in New Zealand and the Australian Taxation Office do not attract any charges. We provide a commentary on this from the IRD:

"The Public Rulings Unit is a division of the Office of the Chief Tax Counsel ("OCTC"), Inland Revenue. The Unit's key function is to determine and disseminate the Commissioner of Inland Revenue's position on various tax issues through the issuing of primarily binding public rulings, interpretation statements and interpretation guidelines…. The Unit was established to provide a real focus on, and commitment to, the provision of public rulings and statements, given their important role in clarifying areas of uncertainty and fostering compliance….the overriding aim is to provide greater certainty for taxpayers and their advisors on difficult areas of taxation law and sometimes on general areas of law that impact on taxation outcomes …" [4]
[4] https://www.taxtechnical.ird.govt.nz/general-articles/inland-revenue-s-public-rulings-unit

79. We note that binding rulings are seen to have a role in both clarifying areas of uncertainty and fostering compliance. The only other activity NZFGC has identified for which FSANZ might cost recover is in relation to preparing the substantiation dossiers for general level health claims for Australian business (since New Zealand business is adequately supported in this area without charge by MPI.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

80. NZFGC considers that cost-recovering from industry for a broader range of activities would exacerbate an existing disparity between large and small to medium businesses in terms of access to activities. As well, in relation to claims, MPI provides significant support to industry in the development of dossiers to support claims although FSANZ might undertake this activity for Australian industry and might charge for doing so.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

81. NZFGC has not made any application to FSANZ but actively engages in consultations on applications relevant to NZFGC's scope of interest.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

82. NZFGC as an association engages regularly with the food regulation system and does not encounter barriers in the process. We experience frustration that some proposals such have taken long periods of time (years) to progress but appreciate the resource constraints that FSANZ operates under.

83. The cost and complexity of the application process (such as gathering sufficient consumer evidence) is also considered a barrier by NZFGC members where there is little or no return on investment. The application process is a real deterrent.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

84. NZFGC members are likely to engage more regularly with the food regulatory system if new pathways are introduced as proposed in this Draft Regulatory Impact Statement. New pathways that expedite low-risk amendments to food standards are most likely to result in increased levels of engagement.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

85. Negative for New Zealand. Members of NZFGC are not supportive of FSANZ co ordinating food incident and food recall responses in New Zealand. Some Australian based NZFGC members are supportive of this component for Australia, but others are not.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

86. Members advise that this question would be better framed around the cost of the interface with government and other agencies in relation to food incidents or recalls. For example, the action taken by the NSWFA over FOS (fructo-oligosaccharides) has had a long standing chilling effect on innovation in industry.

87. The communication and advertising costs should be available. We understand that for a product recall in the major Australian supermarkets, the cost can exceed $1m.

88. The damage to reputations is a cost that is difficult to calculate, can be tremendously significant and is highly variable.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

89. No, FSANZ coordinating food recalls /incident response a function that is NOT equally valuable for Australia and New Zealand. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand. Collaboration could still occur as it does now.

90. In Australia, we understand that some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions present as significant barriers to industry trying to protect consumers. This level of inconsistency is a continuing frustration for industry and a single overarching coordinator could address this situation. As well, we understand that FSANZ is in a unique position of having an Australia-wide 'helicopter view' of emerging issues and responses that could well benefit from it having a broader role.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

91. NZFGC is generally supportive of this component and agrees that FSANZ could reduce interpretive uncertainty through the provision of both greater non-binding, public guidance on food standards, such as statements of intent for food standards, and binding rulings, on aspects of the standards that have proven to be problematic/ interpreted differently. If standards were less ambiguous, then interpretive services overall could be avoided (and would not be required), so this is beneficial to industry (and enforcement authorities).

92. NZFGC is also supportive of FSANZ being resourced to update and maintain industry guidelines.

93. In relation to resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims, Australian-based members of NZFGC support this proposal. Members agree that this would go a long way towards improving the quality of notified claims.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

94. NZFGC is not aware of data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

95. No, FSANZ taking on enforcement activities is NOT equally valuable for Australia and New Zealand. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand. Collaboration could still occur as it does now.

96. In Australia, we understand that some jurisdictions have efficient enforcement systems that work well for industry. Other jurisdictions present as significant barriers to industry trying to ensure there is a level playing field for product compliance. This level of inconsistency is a continuing frustration for industry and a single overarching enforcer for those areas that are generally less of a priority for Australian jurisdictions could address this situation.

97. NZFGC considers enforcement activities for Australia undertaken by FSANZ in limited areas might be beneficial to Australia. There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

98. In fact our response is 'Mixed'. NZFGC considers most of Option 3 would be negative for New Zealand but may have value for Australia. We note that by comparison, the EU does not undertake joint enforcement across nations within the EU but leaves this to each sovereign nation.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

99. N/A

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

100. NZFGC notes that even though the positions Australia and New Zealand take on the international stage in relation to food related matters are often similar, this is not always the case. Australia and New Zealand are two separate countries with differing issues (as evident with respect to different issues raised with the World Trade Organisation (WTO) including on issues in dispute between New Zealand and Australia). The two countries are competitors in the global market. Both countries need their own voice in international fora although those voices could be joined in efforts such as trying to achieve harmonisation for mutual recognition of labelling and composition matters. Other reasons against this proposal include:

• it is often beneficial to have two nations advocating for a common position rather than one;
• positions are generally respective government positions and loss of sovereignty under this proposal is a significant concern;
• different nations take on different roles in international fora that reflect particular interests and strengths.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

101. There would be substantial costs involved in establishing a bilateral enforcement function for FSANZ. We would point out that trans-national boundary law enforcement is generally reserved for global interests and all are formed by treaties between nations or under the authority of an international organisation like the United Nations.

102. We are of the view that the costs for a trans-Tasman enforcement function under FSANZ (in terms of legal inputs alone) would be prohibitive and the benefits very limited for New Zealand.

103. Nonetheless, a pan-Australian role for FSANZ in relation to labelling enforcement or labelling and composition enforcement certainly appears to have merit.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

104. There are NO components in Option 3 that are not public good activities. These include Trans-Tasman guidance, and for Australia: recalls, enforcement and international presence.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

105. The draft Regulatory Impact Statement options are comprehensive as far as they go but the Statement does not go to the issues raised in the Conran Review. These issues potentially have significant impacts on the system. The Conran Review suggested a consensus approach should be adopted at Ministerial meetings which is an approach we would like to see examined for the trans-Tasman system.

106. The questions asked in the draft Regulatory Impact Statement were deficient in not covering the elements explored and not including these last questions. It is very poor policy when submitters can be blindsided by believing they have covered all the questions and had input for those only to find additional questions are including online. This is not regulatory best practice and in fact is very poor regulatory practice.

107. Appropriately resourcing FSANZ to undertake its current and future functions should be a priority since all the change in the world comes to nothing if not resourced.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

108. There is no single ‘highest priorities’ but rather the suite of components that could together deliver significant efficiency gain and benefit across the board. For this, the bulk are in Option 2 simply because of the immediacy of delivery of benefit: Components 1, 2, 4 and 6 in Option 2. Those components with potential down the track are Components 3 and 5 in Option 2 and Component 2 in Option 3.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

109. The key omission for aligning the Aspirations for the Food Regulatory System with the draft Regulatory Impact Statement relate is the facilitation of trade in both. While trade is missing from the Aspirations, the draft Regulatory Impact Statement does propose inclusion within the objectives of the Act which underlines recognition of the importance of this activity. It should be included in both documents. In a summary document on the Aspirations, trade was not mentioned at all. Without trade, none of the Options reflect New Zealand’s view of the joint food regulatory system. The broader challenges related to the global trade and the specific challenges for both countries and for industry are trade and commerce, innovation, competition and regulatory burden/compliance. These need to feature in the future for FSANZ and the FSANZ Act.

110. Continuing to strengthen trade remains a priority Aspiration for the New Zealand food industry and should be a reciprocal and collective Aspiration going forward. Under this Aspiration, international harmonisation and influence on the international stage is a better fit. The trans Tasman market can look outwards to global markets with strength, heightening the importance of international harmonisation. Building strong partnerships with APEC and in trading agreements with the APEC economies could enhance this Aspiration. As well, harmonisation of terms/definitions with other markets promotes consistency between the Food Standards Code and other regulated markets and has potential to alleviate regulatory/trade barriers imposed by importing countries.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

111. We are concerned to ensure that New Zealand’s sovereignty is given appropriate consideration in this and related consultations and negotiations. There is an (understandable) preponderance of Australian issues considered in the draft Regulatory Impact Statement, some which acknowledge the potential for a different approach for New Zealand but others that do not. We have attempted to comment on any necessary difference of approach and look forward to continuing working across the trans-Tasman region as the Food Regulatory Review progresses.

Upload any supplementary information here. :
No file uploaded

18 May 2021

Ms Tiali Goodchild
Population Health Division
Preventive Health Policy Branch
Australian Government Department of Health
GPO Box 9848
Canberra ACT 2601
AUSTRALIA

Email: Australian Department of Health Consultation Hub

cc: [redacted]

Dear Ms Goodchild

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Modernising the FSANZ Act: Draft Regulatory Impact Statement.*

Yours sincerely

[redacted]

Katherine Rich
Chief Executive

Modernising the FSANZ Act: Draft Regulatory Impact Statement

Submission by the New Zealand Food & Grocery Council

18 May 2021

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the *Modernising the FSANZ Act: Draft Regulatory Impact Statement.*

2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over $40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over $34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

EXECUTIVE SUMMARY

3. NZFGC welcomes the breadth of changes proposed for the FSANZ Act as a central and critical component of the Trans-Tasman Food Regulatory System. NZFGC is supportive of a significant majority of the proposals and believes the changes available and proposed will have a huge positive impact for the manufacturing industry in New Zealand, its competitiveness and for trade generally.

4. The three areas we do not support concern enforcement, recalls and representation in international fora. New Zealand is well served with a largely single enforcement agency, the Ministry for Primary Industries (assisted at times by local government). Enforcement is transparent as is recall protocols and both receive regular revisions. A joint enforcement agency across two sovereign nations raises complex issues of accountability, responsibility but most importantly, legal status.

5. In relation to representation in international fora, New Zealand and Australia are both founding signatories of the World Trade Organisation, founding members of Codex Alimentarius, members of many United Nations agencies, including the World Health Organization and the Food and Agriculture Organization, and members of other international fora that deal to differing extents with food matters. Our voices are often aligned but that is not always the case and the sovereign right to individual voice is one that is highly cherished, protected and respected. Australia and New Zealand are separate markets that share standards for labelling and composition. This does not necessitate or justify FSANZ speaking for New Zealand and Australia in international fora.

6. We also note that In previous consultations concerning the FSANZ Act, we stressed the importance of defining "public health" separately from "food safety" which is the paramount objective. However, we do not want to see pursuit of a "better" definition of public health holding up the FSANZ Act review because the Review has the opportunity to clarify and re-affirm FSANZ's core role as a standard setting body focused on consumer safety as it was originally designed to do. We nonetheless support FSANZ being more than a standard setting body but not want to see it duplicating or being the vehicle for other public health activities that more properly sit within health portfolios. We would see this as 'scope creep'.

7. We also comment later in this submission (Response to Question 11) on the importance to NZFGC of including "trade" as a principal objective and, in a hierarchy, ranked equally to the defined public health.

DETAILED COMMENTS

Policy Problems identified

1) The Act does not support efficient and effective regulation and is burdensome to administer in its current form
2) Legislation does not enable a strong, resilient and agile Food Standards System
3) Current arrangements undermine the power of a single joint food system

Questions Policy Problems

Question 1. Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

NZFGC Response

8. NZFGC considers the stated policy problems adequately cover concerns with the regulatory framework presented by the *FSANZ Act 1991* (the **FSANZ Act**) and the operation of FSANZ under the FSANZ Act. NZFGC largely agrees with the description of the problems but NZFGC has some concerns relating to:
    - Policy Problem 1 – public health protection; food sustainability; recognition of indigenous culture and food expertise; structural tensions within FSANZ's objectives in relation to food Ministers' decisions; legislated processes for changing food standards and decision-making;
    - Policy Problem 2 – Food Ministers' Meeting-directed projects
    - Policy Problem 3 – Food recall; enforcement; food-medicine interface; extending influence internationally.

9. These concerns are noted within this submission in the responses to the questions that follow.

10. In previous consultations concerning the FSANZ Act, we stressed the importance of defining "public health" separately from "food safety" which is the paramount objective. However, we do not want to see pursuit of a "better" definition of public health holding up the FSANZ Act review because the Review has the opportunity to clarify and re-affirm FSANZ's core role as a standard setting body focused on consumer safety as it was originally designed to do. We believe FSANZ's core mandate should remain one that focuses on consumer safety and the safety or appropriateness of ingredients or additives in our food.

11. We nonetheless support FSANZ being more than a standard setting body but not want to see it duplicating or being the vehicle for other public health activities that more properly sit within health portfolios. We would this as 'scope creep'.

12. We also comment later in this submission (Response to Question 11) on the importance to NZFGC of including "trade" as a principal objective and, in a hierarchy, ranked equally to the defined public health.

Question 2. What examples or issues are you aware of in the food regulatory system regarding food sustainability?

NZFGC Response

13. NZFGC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues

and are doing so now. For example, the Discussion Paper identifies the role of the New Zealand Commerce Commission in relation to sustainability claims (p27) but there are other agencies involved. It is simply not correct to state (p27) that industry can make unregulated claims in the current environment as the *Fair Trading Act 1986* appropriately covers such claims.

14. Food companies are generally embracing sustainability in their operations to a greater or lesser degree partly as good corporate citizens and partly in response to consumer expectations.

15. The New Zealand Ministry for Primary Industries (**MPI**), Ministry for the Environment (**MfE**), Department of Conservation (**DoC**) and Ministry or Business, Innovation and Employment (**MBIE**) all have roles in the area of sustainability. Australian Government agencies are equally involved in sustainability.

16. NZFGC considers it an unnecessary diversion of resources for FSANZ to also have a formal role. It might well dilute the focus on food safety and would certainly slow down/delay the process of amending the Australia New Zealand Food Standards Code (the **Food Standards Code**) and make the current application process even more complex by requiring the inclusion in applications of sustainability matters. It would also compromise resourcing and funding on other higher priority food safety areas covered under the draft Regulatory Impact Statement.

17. FSANZ should still participate in discussions and responses to issues (such as with PFAS (per- and poly-fluoroakyl substances)) which have intermingled environmental, human health and potentially food safety issues. This is not only because of obligations under Part 1.4 of the Food Standards Code which deals with Contaminants and Residues but noting also that where limits have not been set, there are still requirements imposed in the applicable Food Acts that food must be safe and suitable for human consumption. Nonetheless FSANZ should not have a formal role around sustainability.

Question 3. What examples or issues are you aware of in the food regulatory system regarding recognition of indigenous culture and food expertise?

NZFGC Response

18. In the New Zealand context, the Crown's obligations to the Treaty of Waitangi/Te Tiriti o Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasises the role of the public service in supporting the partnership between Māori perspectives and the Crown under the Treaty of Waitangi and the importance of incorporating Māori perspectives and Mātauranga Māori (Māori system of knowledge) at all levels. This mandate, by principle, includes any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Questions Option 1 Retain the status quo

Question 4. Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

19. Negative. The system is not broken but there are areas that are creating drag and barriers to maintaining and encouraging the further development of a vibrant industry sector across the region.

Question 5. What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

NZFGC Response

20. NZFGC responds from an industry perspective that the current arrangements are creating significant and compounding loss of competitiveness. The most recent example of this is in relation to Application A1155 concerning human milk oligosaccharides (HMOs). The particular HMOs that were the subject of Application A1155 have been approved in over 70 jurisdictions globally with none of the time limits or constraints that Food Ministers decided were necessary for Australia and New Zealand. Food Ministers were well aware of the impact on innovation, competitiveness and trade of their decisions since NZFGC had alerted to them to the consequences well in advance of their decision. The uncertainty that their time-bound decision introduces, has an incalculable cost on competition and economic growth.

21. The legislated processes for changing food standards and decision-making are inflexible, costly and anti-innovation contributing to a stifling of economic growth and the further development of the Australian and New Zealand food industry.

Question 6. Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

NZFGC Response

22. NZFGC does not hold data that would help to quantify the cost of delays when bringing products to market through the current process. We would suggest there may be data on lost opportunity as a whole eg the value of the cross-border eCommerce related to HMO-containing products that is being met by the EU (where HMO approved). Additionally, we would point to the cost to consumers and innovation as 'lost opportunities' because businesses are choosing not to participate in bringing products to market due to the regulatory burden imposed on businesses and potentially, the otherwise greater risk to return on investment.

Question 7. Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

NZFGC Response

23. NZFGC is not aware of other costs and benefits that might be considered as part of the impact analysis although there should be a value applied to the current system being well respected even though it is outdated and no longer keeping pace with the rate of change in the overall food environment.

Question 8. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

NZFGC Response

24. NZFGC is not aware of any data that might assist in quantifying the magnitude of these costs and benefits.

Question 9. What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e. retain the status quo)?

NZFGC Response

25. See response to Questions 4 to 6.

Question 10. (For jurisdictional regulators)

NZFGC Response

26. N/A

Questions Option 2 Modernise the Act, make it agile, resilient and fit-for-purpose

Component 1 Clarify objectives and functions and reflect these in the Act (p50)

Question 11. Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

27. Positive. NZFGC is generally supportive of this component but strongly advocates that facilitation of trade is added to FSANZ objectives but not sustainability.

28. The Draft Regulatory Impact Statement lists several elements that could be amended for which there are no questions and we comment on these as follows:

Aligning wording around public health protection across section 3 and section 18

29. NZFGC agrees with alignment but considers that food safety should always be the highest priority. We also consider that trade goals should be given equal priority to public health (appropriately defined) after food safety. For this reason, we support wording that clearly separates food safety from public health objectives. This also acknowledges the existing hierarchy of objectives in the FSANZ Act currently.

Expanding the objectives of FSANZ to recognise trade as a core goal

30. NZFGC strongly supports such an expansion and, as noted above, having separated food safety as the prime objective, would list public health protection and trade as subordinate but equal objectives.

Establishing criteria to be met for Ministers to request a review

31. NZFGC strongly supports setting criteria that Ministers must meet before requesting a review.

Amending Act to ensure FSANZ has the breadth of statutory functions required to effectively deliver on its objectives

32. NZFGC considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, a role defined for FSANZ regarding food fraud, if this were to proceed, would need to ensure minimal overlap with competition watchdogs and jurisdictional enforcement agencies including police.

Question 12. If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e. environmental impacts) or a broad definition of sustainability (i.e. environmental, health, economic and social impacts)?

NZFGC Response

33. See NZFGC's response to Question 2. In summary, NZFGC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues. Many food companies are embracing sustainability in their operations. NZFGC considers it an unnecessary diversion of resources for FSANZ to also have a formal role in sustainability.

Question 13. What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

NZFGC Response

34. NZFGC believes that economic opportunities for Australian and New Zealand industry from sustainability will be captured over time without FSANZ's involvement but rather from broader drivers such as consumer demand and expectations, climate change legislation, certification etc. An involvement of FSANZ could generate costs through diverting scarce resources and diverting focus from food safety, public health protection and trade objectives.

Question 14. How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

NZFGC Response

35. NZFGC is supportive of FSANZ's activities better recognising indigenous culture and food expertise.

The right framing

36. Whether the "framing" is right will depend on how the recognition is incorporated. We would, for example, support wording such as "recognise indigenous culture and food expertise" as we do not believe this would the New Zealand Government's obligations. For this, the FSANZ Act should include a Treaty of Waitangi clause along the lines as is included in the New Zealand *Conservation Act 1987:*

    "4 Act to give effect to Treaty of Waitangi
    This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi."[1]

37. The *Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System* (**the Food Treaty**) should also include a Treaty of Waitangi clause. This might, for example, be along the lines of Article 16.7 in the *Protocol to amend the Agreement between Singapore and New Zealand on a Closer Economic Partnership* (1 Jan 2020) under Chapter 16:

    "Article 16.7: Treaty of Waitangi

1https://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=ta_act_C_ac%40ainf%40anif_an%40bn%40rn_25_a&p=4

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. …"[2]

Differences between the Australian context and the New Zealand context

38. The key difference between the New Zealand context and the Australian context is that, as the foregoing sets out, the New Zealand Government has a constitutional obligation in relation to Maori under the Treaty of Waitangi. This would be important to consider.

Changes required to the FSANZ Act to enable recognition

39. As noted above, amendment to the FSANZ Act through a clause that provides the FSANZ Act to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. Changes relating to recognition of Australian indigenous peoples and culture are best provided by Australian submitters.

Question 15. What economic opportunities might arise for indigenous businesses from bringing traditional goods to the broader market?

NZFGC Response

40. In a Report commissioned by the Reserve Bank of New Zealand and published in 2020[3], *Te Ōhanga Māori 2018: The Māori Economy 2018*, the Māori economy was put at $68.7 billion, up on the previous 2013 estimate of $42.6b. Māori are a young population and growing fast and skilled Māori are moving into entrepreneurship. There are over 100,000 more Māori in the workforce today than there were eight years ago and more and more are the engine of growth in the economy of Aotearoa. The assets and businesses of Māori employers are spread broadly across many sectors, including the primary industries, where assets include $7.5b in agriculture ($1.6b in dairy farming), forestry, and fishing. Each of these has the potential for economic opportunities for traditional and non-traditional goods in the broader food and beverage market.

41. Some examples:
    a) Ngaa Rauru Kiitahi iwi started the Kaitahi As One brand several years ago to provide work for its people. The first product it launched, which has been incredibly successful to date, was its frozen smoothy drops. this is about how such a successful startup takes indigenous ingredients and creates a food worthy of all these accolades. "We are so proud that through our brand, we are able to bring some old Māori traditions into the modern world and deliver a product which bolsters health outcomes through good nutrition and provides jobs in our small community", Arohania Owen, Iwi working group lead, says.

    b) The Australian company, Vitonic brand, choose to work with FoodSouth Otago on the development of the products because of their affiliation with the University of Otago, which had delivered some solid work on the health benefits of currants and berries. Sean Cunial, Rouge Managing Director knew he wanted a product that was highly functional and used geographically based botanicals – eg kawa kawa and

2 https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-singapore-closer-economic-partnership/cep-text/#bookmark1

3 https://www.rbnz.govt.nz/research-and-publications/research-programme/te-ohanga-maori-2018

Kakadu plum (indigenous to New Zealand and Australia). The challenge was to incorporate known benefits into a natural, concentrated drink which had minimal ingredients and low sugar. The result was a gluten, preservative, caffeine free vegan friendly drink with no added sugar made entirely from natural ingredients.

42. A key barrier for economic opportunities for indigenous food and beverages is the difficulty presented by the food regulatory system for permitting traditional foods to enter the market since many are considered novel foods and few (if any) have successfully traversed the novel foods requirements.

Component 2 | Facilitate risk-based approaches to developing or amending food regulatory measures (p90)

Question 16. Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

43. Positive. NZFGC is generally supportive of the elements in this component but notes 'risk' and the 'hierarchy of risk' is not defined in the draft Regulatory Impact Statement.

44. In relation to elements not covered by questions, the following is provided:

Implementing a decision-making tool to determine instrument that can most appropriately deal with the identified problem

45. NZFGC is supportive of tools that contribute to determining the instrument that can best assist with dealing with an identified problem. However, NZFGC considers there are other elements that should be prioritised ahead of this element.

Risk could drive processes in relation to applications and proposals

46. It is not clear how this proposal would operate but approaches that would streamline the application and proposal process are strongly supported in principle.

Creation of new pathways to expedite low-risk amendments to food standards

47. As with the previous proposal, it is not clear how this proposal would operate but approaches that would expedite amendments to food standards are supported in principle. We note that there is precedent in relation to flavours (the definition of flavours in the Food Standards Code accepts any flavours from several sources: Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States; *Chemically-defined flavouring substances*, Council of Europe, November 2000; Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1; 21 CFR § 172.515) and water guidelines in Australia only Standard 2.6.2—3 which references the *Guidelines for drinking-water quality, 4th edition incorporating the first addendum, 2017, WHO, Geneva*.

48. NZFGC supports new pathways including adoption of international standards but we do not support automatic adoption without the ability for stakeholders (including industry) to comment on proposed new measures. This is important to maintaining relevant and appropriate measures for Australia and New Zealand. NZFGC supports a minimal check approach which requires further discussion.

Additional pathway to bring very low risk products to market

49. 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. NZFGC also continues to support industry self-substantiation of bringing low risk products

to market. MPI currently supports industry very well in preparing and submitting self-substantiated general level health claims as distinct from what is happening in Australia where there is little or no support.

50. One of the recommendations under this section of the draft Regulatory Impact Statement (page 58, second bullet point) suggests 'post market monitoring and surveillance to ensure ongoing compliance or address identified safety risks'. We have reservations about the utility of this since safety risks should have been identified to assess the products as eligible for the pathway. – what is being proposed is potentially flawed if safety risks are identified post market.

Abolition of the pathway for high level health claims

51. The reasons why the high level health claims pathway is not being used is not stated but we suspect this may be complexity and cost. If this is the case, then NZFGC is generally supportive of abolishing the pathway conditional on high level health claims still being available and an alternate pathway being identified. This is because there are a number of pre-approved high level health claims in the Food Standards Code and there may eventually be an application in the future.

52. We also suggest that FSANZ might raise a proposal to bring into the Food Standards Code those high level health claims that have been assessed by EFSA and approved by the EU since Standard 1.2.7 was completed. Such a process could leverage the risk assessments undertaken by EFSA.

Question 17. Do you think this Component should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

NZFGC Response

53. NZFGC supports decision-making being delegated to the FSANZ Board conditional on appropriate safeguards and checks being included to control the extent of delegation and limit it to lower risk areas of activity. These might be in the form of pre-defined criteria so that decisions are not made on a case-by-case basis thereby eroding the potential benefits. After two decades of operation, it is very clear that Minister's should not be delving into the minutiae of the likes of food additives, processing aids or low risk labelling and composition matters. These matters should be delegated along with minor adjustments to Standards and technical amendments.

Question 18. What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

NZFGC Response

54. NZFGC considers Codes of Practice or Guidelines would be beneficial and could also be used to address ambiguity within parts of the Code. NZFGC would want to see these as collaborative developments featuring consultation provisions. We would also support partnering with other industry and non-industry agencies that might have expertise in the subject area to contribute to development. Some areas that could benefit from Codes of Practice or Guidelines include:
    - microbiological measures
    - processes related to novel foods and nutritive substances.

Question 19. Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

NZFGC Response

55. NZFGC has not been able to identify any data on the cost of compiling evidence to support a comprehensive risk assessment by FSANZ.

Question 20. Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

NZFGC Response

56. This is challenging to quantify given it includes elements such as the debilitating effect of loss of innovation, time to get products to market and loss of international competitiveness. NZFGC suggests that, as a starting point, the average cost of paid applications would be useful to assist with quantification of potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments.

57. We note this is limited to risk assessments and we support this limitation.

Component 3 | Build in flexibility to create bespoke regulatory sandboxes (p57) (regulatory safe place to test pilot products overseen by regulators)

Question 21. Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

58. Positive. NZFGC is generally supportive of this component but more detail is needed to assess how this proposal would be applied. While the detail of regulatory sandboxes should not be pursued at the expense of substantial reforms in other areas, the facility might be included in the amendments and the detail developed later.

59. NZFGC considers that development of this concept should be a secondary priority to other amendments to the FSANZ Act that have the opportunity to deliver tangible benefits with greater immediacy and certainty. In any event, safety should be an imperative under this framework.

Question 22. What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

NZFGC Response

60. NZFGC is aware of technologies and expertise that is available to New Zealand businesses through the Food Innovation Network (which includes five open access food and beverage production facilities). The Food Innovation Network could be considered a sandbox facilitator in so far as the products developed with the Network might be tested in the market for demand. The processes and product development in these facilities could also provide an indication of the range of examples that might utilise regulatory sandboxes. These include that the production runs are contained, small and particularly assist small to medium sized businesses. Some examples are:

    a) The Australian-based company, Nu-Mega Ingredients, had a product innovation it wanted to take from the R&D concept stage to small batch commercialisation. Since July 2019, Nu-Mega had been working with the FoodBowl on scaling up the manufacturing of a novel emulsion technology developed by Nu-Mega containing DHA (docosahexaenoic acid), an Omega-3 fat, from an algal source. The double-emulsion technology is specifically designed for DHA fortification of ultra-heat treated (UHT) beverage products. The patented technology was refined, trialled and was producing a product at the FoodBowl in semi-commercial quantities.

b) Ananda knew its sausages were not like any other – the ingredients and methods were unconventional for a traditional product like a sausage. It needed to find a way to take what was a very manual process and turn it into a commercially viable one. This was achieved and currently each batch produces 180kgs versus the 40kgs he used to make. Another challenge many small businesses face on the journey to market is having the ability to commit to the minimum quantities a contract manufacturer requires to produce the product. FoodSouth provides the facilities to do small-scale manufacturing (to help confirm demand) and also do the technical work so when the client goes to a contract manufacturer, the scale-up is much more seamless.

61. Another area that might utilise regulatory sandboxes could be any relevant work emerging from the New Zealand Food Safety and Science Research Centre (NZFSSRC).

62. Another alternative might be to allow product to be brought into the market whilst a request for an urgent application was processed.

Component 4 | Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation (p59)

Question 23. Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

63. Positive. NZFGC is generally supportive of this component but there are reservations as noted in the response to the following question.

Question 24. Should a function for FSANZ to collect, consolidate and communicate food safety data be legislated?

NZFGC Response

64. NZFGC is generally supportive of FSANZ collecting data that could be consolidated and communicated. NZFGC is not certain this needs to be legislated.

65. This Component also proposes that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards. NZFGC supports FSANZ being resourced to undertake reviews of food standards but that the standards to be reviewed should be prioritised to ensure standards are not reviewed for the sake of review – it should not be a 'tick the box' approach across the Food Standards Code. There should also be a consultation process provided for the priority ranking to ensure stakeholders are involved in the review programme.

66. Equipping FSANZ to coordinate food safety research across Australia and to develop strategic relationships with New Zealand food safety research entities is supported. This co-ordination is undertaken virtually to a great extent in New Zealand to ensure that agencies retain control over their research programmes but that duplication is avoided and gaps can be identified and addressed.

67. 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. Both countries compile nutrition data although we note New Zealand's data is so out-of-date as to have questionable utility. In relation to food safety data, all jurisdictions maintain food safety databases and New

Zealand's are collected under statute and unlikely to be shared. More information and research around this proposal is required.

68. In relation to FSANZ collating and creating consumer-facing food safety education materials, NZFGC would support this if FSANZ receives additional resourcing sufficient to cover this activity in addition to its other activities and so long as it did not duplicate New Zealand's work in this area. Therefore, it may also be appropriate for this activity to be limited to Australia.

Component 5 | Foster new approaches to working with other agencies, with a focus on intelligence-sharing.

Question 25. Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

69. Positive. NZFGC is generally supportive of this component if it was independently resourced.

FSANZ and the Food Ministers' Meeting could undertake periodic joint agenda-setting to agree on proposals on which to focus

70. NZFGC considers an annual or biannual agenda item on the Ministerial Meeting agenda prepared by FSANZ, to provide Ministers with the opportunity to comment on the prioritisation, would be appropriate. However, since Ministers have political affiliations and membership regularly changes, it is likely that their interests in the FSANZ work programme could change also. In such a circumstance, and to ensure some stability over time, criteria for setting and changing the programme around proposals would be critical.

FSANZ could partner with other government [stakeholders] to make intelligence-led decisions and reduce duplication of efforts

71. In relation to the prospect of FSANZ partnering with other government stakeholders reference is made to reducing 'fragmentation across the system'. It is not clear what fragmentation is referring to. The suggestion is that earlier involvement with FRSC could be beneficial. FSANZ is well placed to have permanent membership of FRSC. Collaborating with enforcement agencies to identify emerging risks could be a role for FSANZ especially in Australia as well as the Implementation Sub Committee on Food Regulation (**ISFR**). In terms of activating the appropriate regulatory response, clearly the final decision rests with jurisdictions.

Enhanced collaboration around information sharing could also extend to international partnerships with overseas jurisdictions

72. NZFGC understands that this already occurs with Health Canada and with the European Food Safety Authority. There is no reason why other agencies, especially those in the Asia-Pacific Region, could not be included. However, servicing partnerships takes time and resources so consideration would need to be given about the appropriate number of such arrangements.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government

73. NZFGC would expect that FSANZ would be using its own data to inform its project work whether requested by jurisdictions or on its own volition. The request for project work from jurisdictions should be limited as this diverts resources from priorities for standard setting.

74. In relation to providing access to data to the general public including other researchers, so long as anonymity of source was preserved for industry and individuals to ensure

commercial information was protected and privacy was preserved, there seems no reason why selected data should not be publicly available. Security of data should be a key focus of any such endeavour.

Question 26. Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

NZFGC Response

75. NZFGC considers that access to data should be free of charge. If charges were applied, this may lead to issues around ownership and could be a disincentive to external parties providing FSANZ with data. FSANZ does not pay for the data provided to it.

Component 6 | Streamline FSANZ's governance and operations (p62)

Question 27. Would the impact of pursuing Option 2, Component 6 represent a positive, negative, or neutral outcome for your sector?

NZFGC Response

76. Positive. NZFGC is generally supportive of this component but has reservations about reducing Board numbers.

Legislation could support more efficient and effective governance

77. NZFGC supports legislative amendment to support more efficient and effective governance such as streamlining nomination and appointment processes for board members. We do not think that virtual or face-to-face meetings need legislative change as they have not to date. We consider a mix of virtual and face-to-face meetings to be efficient as was the practice with telecons prior to COVID 19.

78. NZFGC does not support a smaller Board. The scope of FSANZ's work is very broad and warrants a Board of 12 members noting that additional expertise can still be included on a case-by-case basis. With a predominance of virtual meetings, cost is limited to fees. We note this has been assessed as A$1.2m over 10 years.

79. In relation to investment into business solutions that might help staff work more efficiently, this would depend on form and cost. Again, we do not consider this requires legislative amendment but would support amendment if necessary.

Question 28. What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

NZFGC Response

80. On balance, Option 2 would be positive for industry and would have flow-on effects for consumers through reduced costs of doing business. The key risk is for implementation generating unexpected consequences but this is the case for any legislative change. We have identified under each component, potential issues/risks which we recommend are addressed before legislation is drafted.

81. For industry there is the greater risk associated with components of this Option with some strongly supported by industry but a few recommended which should not proceed. We have not assessed the magnitude of these.

Question 29. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

NZFGC Response

82. NZFGC agrees with the assessment of costs and benefits of Option 2 presented in the Draft Regulatory Impact Statement and is generally supportive of this component. Benefits for FSANZ would also have flow-on benefits to industry in terms of operational agility, improved flexibility through new pathways to change food standards beyond the capacity savings which could be reallocated to other areas of priority work.

Question 30. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

NZFGC Response

83. NZFGC is not aware of data to assist in quantifying the magnitude of these costs and benefits.

Question 31. Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

NZFGC Response

84. NZFGC does not believe the Act should provide for more of FSANZ's current work with industry to be offset through cost recovery mechanisms. It is not clear what 'types of applications' might be broadened for which FSANZ charges fees and, in any case, this would have the greatest impact on any notion of making applications by small to medium businesses.

85. NZFGC does not believe the provision of interpretative advice should attract fees since this would mean unequal access to the legal system. when parts of the code are unclear and ambiguous and which require interpretive advice, then there shouldn't be a charge. Interpretive advice relating to the Code should be made available on the public domain so that others may benefit.

86. We note that public binding rulings made by both the Internal Revenue Department (IRD) in New Zealand and the Australian Taxation Office do not attract any charges. We provide a commentary on this from the IRD:

    "*The Public Rulings Unit is a division of the Office of the Chief Tax Counsel ("OCTC"), Inland Revenue. The Unit's key function is to determine and disseminate the Commissioner of Inland Revenue's position on various tax issues through the issuing of primarily binding public rulings, interpretation statements and interpretation guidelines…. The Unit was established to provide a real focus on, and commitment to, the provision of public rulings and statements, given their important role in clarifying areas of uncertainty and fostering compliance….the overriding aim is to provide greater certainty for taxpayers and their advisors on difficult areas of taxation law and sometimes on general areas of law that impact on taxation outcomes …*"[4]

87. We note that binding rulings are seen to have a role in both clarifying areas of uncertainty and fostering compliance. The only other activity NZFGC has identified for which FSANZ might cost recover is in relation to preparing the substantiation dossiers for general level health claims for Australian business (since New Zealand business is adequately supported in this area without charge by MPI.

4 https://www.taxtechnical.ird.govt.nz/general-articles/inland-revenue-s-public-rulings-unit

Question 32. What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

NZFGC Response

88. NZFGC considers that cost-recovering from industry for a broader range of activities would exacerbate an existing disparity between large and small to medium businesses in terms of access to activities. As well, in relation to claims, MPI provides significant support to industry in the development of dossiers to support claims although FSANZ might undertake this activity for Australian industry and might charge for doing so.

Question 33. How often do you currently engage with the food regulation system through making applications to change food standards?

NZFGC Response

89. NZFGC has not made any application to FSANZ but actively engages in consultations on applications relevant to NZFGC's scope of interest.

Question 34. What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system.

NZFGC Response

90. NZFGC as an association engages regularly with the food regulation system and does not encounter barriers in the process. We experience frustration that some proposals such have taken long periods of time (years) to progress but appreciate the resource constraints that FSANZ operates under.

91. The cost and complexity of the application process (such as gathering sufficient consumer evidence) is also considered a barrier by NZFGC members where there is little or no return on investment. The application process is a real deterrent.

Question 35. Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

NZFGC Response

92. NZFGC members are likely to engage more regularly with the food regulatory system if new pathways are introduced as proposed in this Draft Regulatory Impact Statement. New pathways that expedite low-risk amendments to food standards are most likely to result in increased levels of engagement.

Questions Option 3

Component 1 | Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative

Question 36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? Neutral?

NZFGC Response

93. Negative for New Zealand. Members of NZFGC are not supportive of FSANZ co-ordinating food incident and food recall responses in New Zealand. Some Australian

based NZFGC members are supportive of this component for Australia, but others are not.

Question 37. Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

NZFGC Response

94. Members advise that this question would be better framed around the cost of the interface with government and other agencies in relation to food incidents or recalls. For example, the action taken by the NSWFA over FOS (fructo-oligosaccharides) has had a long-standing chilling effect on innovation in industry.

95. The communication and advertising costs should be available. We understand that for a product recall in the major Australian supermarkets, the cost can exceed $1m.

96. The damage to reputations is a cost that is difficult to calculate, can be tremendously significant and is highly variable.

Question 38. Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand? Why?

NZFGC Response

97. No, FSANZ coordinating food recalls /incident response a function that is NOT equally valuable for Australia and New Zealand. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand. Collaboration could still occur as it does now.

98. In Australia, we understand that some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions present as significant barriers to industry trying to protect consumers. This level of inconsistency is a continuing frustration for industry and a single overarching coordinator could address this situation. As well, we understand that FSANZ is in a unique position of having an Australia-wide 'helicopter view' of emerging issues and responses that could well benefit from it having a broader role.

Component 2 | Provide for FSANZ to give greater guidance on food standards

Question 39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

99. Positive. NZFGC is generally supportive of this component and agrees that FSANZ could reduce interpretive uncertainty through the provision of both greater non-binding, public guidance on food standards, such as statements of intent for food standards, and binding rulings, on aspects of the standards that have proven to be problematic/interpreted differently. If standards were less ambiguous, then interpretive services overall could be avoided (and would not be required), so this is beneficial to industry (and enforcement authorities).

100. NZFGC is also supportive of FSANZ being resourced to update and maintain industry guidelines.

101. In relation to resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims, Australian-based members of NZFGC

support this proposal. Members agree that this would go a long way towards improving the quality of notified claims.

Question 40. Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

NZFGC Response

102. NZFGC is not aware of data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards.

Component 3 | FSANZ could take on limited enforcement activities.

Question 41. Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

NZFGC Response

103. No, FSANZ taking on enforcement activities is NOT equally valuable for Australia and New Zealand. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand. Collaboration could still occur as it does now.

104. In Australia, we understand that some jurisdictions have efficient enforcement systems that work well for industry. Other jurisdictions present as significant barriers to industry trying to ensure there is a level playing field for product compliance. This level of inconsistency is a continuing frustration for industry and a single overarching enforcer for those areas that are generally less of a priority for Australian jurisdictions could address this situation.

105. NZFGC considers enforcement activities for Australia undertaken by FSANZ in limited areas might be beneficial to Australia. There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

Question 42. Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

106. Mixed. NZFGC considers most of Option 3 would be negative for New Zealand but may have value for Australia. We note that by comparison, the EU does not undertake joint enforcement across nations within the EU but leaves this to each sovereign nation.

Question 43. Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

NZFGC Response

107. N/A

Component 4 | Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage (p118)

Question 44. Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

NZFGC Response

108. Negative. NZFGC notes that even though the positions Australia and New Zealand take on the international stage in relation to food related matters are often similar, this is not always the case. Australia and New Zealand are two separate countries with differing issues (as evident with respect to different issues raised with the World Trade Organisation (**WTO**) including on issues in dispute between New Zealand and Australia). The two countries are competitors in the global market. Both countries need their own voice in international fora although those voices could be joined in efforts such as trying to achieve harmonisation for mutual recognition of labelling and composition matters. Other reasons against this proposal include:

- it is often beneficial to have two nations advocating for a common position rather than one;
- positions are generally respective government positions and loss of sovereignty under this proposal is a significant concern;
- different nations take on different roles in international fora that reflect particular interests and strengths.

Question 45. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

NZFGC Response

109. There would be substantial costs involved in establishing a bilateral enforcement function for FSANZ. We would point out that trans-national boundary law enforcement is generally reserved for global interests and all are formed by treaties between nations or under the authority of an international organisation like the United Nations.

110. We are of the view that the costs for a trans-Tasman enforcement function under FSANZ (in terms of legal inputs alone) would be prohibitive and the benefits very limited for New Zealand.

111. Nonetheless, a pan-Australian role for FSANZ in relation to labelling enforcement or labelling and composition enforcement certainly appears to have merit.

Question 46. What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

NZFGC Response

112. There are no components in Option 3 that are not public good activities. These include Trans-Tasman guidance, and for Australia: recalls, enforcement and international presence.

Overarching views on the RIS

Question 47. Do you think the current options presented in the draft Regulatory Impact Statement represent the full range of policy approaches that governments might consider?

NZFGC Response

113. The draft Regulatory Impact Statement options are comprehensive as far as they go but the Statement does not go to the issues raised in the Conran Review. These issues potentially have significant impacts on the system. The Conran Review suggested a consensus approach should be adopted at Ministerial meetings which is an approach we would like to see examined for the trans-Tasman system.

114. The questions asked in the draft Regulatory Impact Statement were deficient in not covering the elements explored and not including these last questions. It is very poor policy when submitters can be blindsided by believing they have covered all the questions, and had input for those, only to find additional questions are including online. This is not regulatory best practice and in fact is very poor regulatory practice.

115. Appropriately resourcing FSANZ to undertake its current and future functions should be a priority since all the change in the world comes to nothing if not resourced.

Question 48. Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

NZFGC Response

116. There is no single 'highest priorities' but rather the suite of components that could together deliver significant efficiency gain and benefit across the board. For this, the bulk are in Option 2 simply because of the immediacy of delivery of benefit: Components 1, 2, 4 and 6 in Option 2. Those components with potential down the track are Components 3 and 5 in Option 2 and Component 2 in Option 3.

Alignment with draft Aspirations for the Food Regulatory System

Question 49. Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

NZFGC Response

117. The key omission for aligning the Aspirations for the Food Regulatory System with the draft Regulatory Impact Statement relate is the facilitation of trade in both. While trade is missing from the Aspirations, the draft Regulatory Impact Statement does propose inclusion within the objectives of the Act which underlines recognition of the importance of this activity. It should be included in both documents. In a summary document on the Aspirations, trade was not mentioned at all. Without trade, none of the Options reflect New Zealand's view of the joint food regulatory system. The broader challenges related to the global trade and the specific challenges for both countries and for industry are trade and commerce, innovation, competition and regulatory burden/compliance. These need to feature in the future for FSANZ and the FSANZ Act.

118. Continuing to strengthen trade remains a priority Aspiration for the New Zealand food industry and should be a reciprocal and collective Aspiration going forward. Under this Aspiration, international harmonisation and influence on the international stage is a better fit. The trans-Tasman market can look outwards to global markets with strength, heightening the importance of international harmonisation. Building strong partnerships with APEC and in trading agreements with the APEC economies could enhance this Aspiration. As well, harmonisation of terms/definitions with other markets promotes consistency between the Food Standards Code and other regulated markets and has potential to alleviate regulatory/trade barriers imposed by importing countries.

Supplementary information

Question 50. If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document

NZFGC Response

119. We are concerned to ensure that New Zealand's sovereignty is given appropriate consideration in this and related consultations and negotiations. There is an (understandable) preponderance of Australian issues considered in the draft Regulatory Impact Statement, some of which acknowledge the potential for a different approach for New Zealand but others that do not. We have attempted to comment on any necessary difference of approach and look forward to continuing working across the trans-Tasman region as the Food Regulatory Review progresses.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-18 21:35:55**

About you

What is your name?

Name:
CAROLE INKSTER

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
INFANT NUTRITION COUNCIL AUSTRALIA AND NEW ZEALAND

Which country are you responding from?

Drop down list about which country the respondent is based:
Trans-Tasman organisation

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

INC is the association for the infant formula and toddler milk drinks industry in Australia and New Zealand and represents manufacturers, marketers and brand owners who between them are responsible for more than 95% of the volume of infant formula manufactured, sold and exported in Australia and New Zealand.

INC aims to:
1. Improve infant nutrition by supporting the public health goals for the protection and promotion of breastfeeding and, when needed, infant formula as the only suitable alternative; and
2. Represent the infant formula and toddler milk drinks industry in Australia and New Zealand.

The INC is a responsible body that voluntarily restricts its marketing practices to support government policies for the protection and promotion of breastfeeding.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

INC considers the stated policy problems traverse adequately concerns with the regulatory framework presented by the FSANZ Act and the operation of FSANZ under the Act. INC largely agrees with the description of the problems but INC has some concerns relating to:
• Policy Problem 1 – public health protection; food sustainability; recognition of indigenous culture and food expertise; structural tensions within FSANZ's objectives in relation to food Ministers' decisions; legislated processes for changing food standards and decision-making;
• Policy Problem 2 – Food Ministers' Meeting-directed projects
• Policy Problem 3 – Food recall; enforcement; food-medicine interface; extending influence internationally.
These concerns are noted within this submission in the responses to the questions indicated.

In previous consultations concerning the FSANZ Act, we also stressed the importance of defining “public health” separately from “food safety” which is the paramount objective. We also comment later in this submission (Response to Question 11) on the importance of including “trade” as a principal objective and, in a hierarchy, ranked equally to the defined public health.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

INC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues. For example, the Discussion Paper identifies the role of the New Zealand Commerce Commission in relation to sustainability claims (p27).

Food companies are generally embracing sustainability in their operations to a greater or lesser degree partly as a good corporate citizens and partly in response to consumer expectations.

The New Zealand Ministry for Primary Industries (MPI), Ministry for the Environment (MfE), Department of Conservation (DoC) and Ministry or Business, Innovation and Employment (MBIE) all have roles in the area of sustainability. Australian Government agencies are equally involved in sustainability.

INC considers it an unnecessary diversion of resources for FSANZ to also have a formal role. This does not mean it cannot participate in discussions and responses (such as with PFAS (per- and poly-fuoroakyl substances)) but it should not have a formal role.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In the New Zealand context, the Crown’s obligations to the Treaty of Waitangi/Te Tiriti o Waitangi are paramount. The Public Service Act 2020 provides a modern legislative framework that emphasises the role of the public service in supporting the partnership between M■ori perspectives and the Crown under the Treaty of Waitangi and the importance of incorporating M■ori perspectives and M■tauranga M■ori (M■ori system of knowledge) at all levels. This mandate, by principle, includes any trans-Tasman programme or regulatory agency where the New Zealand Government are members or partners.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

INC responds from an industry perspective that the current arrangements are creating significant and compounding loss of competitiveness.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

INC responds from an industry perspective that the current arrangements are creating significant and compounding loss of competitiveness. The most recent example of this is in relation to Application A1155 concerning human milk oligosaccharides (HMOs). The particular HMOs that were the subject of Application A1155 have been approved in over 70 jurisdictions globally with none of the time limits or constraints that Food Ministers decided were necessary for Australia and New Zealand. Ministers were well aware of the impact on innovation, competitiveness and trade of their decisions The uncertainty that this introduces has an incalculable cost on competition and economic growth.

The legislated processes for changing food standards and decision-making are inflexible, costly and anti-innovation contributing to a stifling of economic growth and the expansion of the Australian and New Zealand food industry.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

INC does not hold data that would help to quantify the cost of delays when bringing products to market through the current process. We would suggest there may be data on lost opportunity as a whole eg the value of the cross-border eCommerce related to HMO containing products that is being met by the EU (where HMO approved).

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

INC is not aware of other costs and benefits that might be considered as part of the impact analysis although there should be a value applied to the current system being well respected although now outdated and no longer keeping pace with the rate of change in the overall food environment.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

INC is not aware of any data that might assist in quantifying the magnitude of these costs and benefits.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

See response to Q4-6.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component but strongly advocates that facilitation of trade is added to FSANZ objectives but not sustainability.

The Draft Regulatory Impact Statement lists several elements that could be amended for which there are no questions and we comment as follows:

Aligning wording around public health protection across section 3 and section 18 – INC agrees with alignment but considers that food safety should always be the highest priority. We also consider that trade goals should be given equal priority to public health (appropriately defined) after food safety. For this reason, we support wording that clearly separates food safety from public health objectives. This also acknowledges the existing hierarchy of objectives in the FSANZ Act currently.

Expanding the objectives of FSANZ to recognise trade as a core goal – INC strongly supports such an expansion and, as noted above, having separated food safety as the prime objective, would list public health protection and trade as subordinate but equal objectives.
Establishing criteria to be met for Ministers to request a review – INC strongly supports setting criteria that Ministers must meet before requesting a review.

Amending Act to ensure FSANZ has the breadth of statutory functions required to effectively deliver on its objectives – INC considers any statutory function relating to longer term population health objectives should be narrow in scope and carefully considered to avoid duplication with other government departments. Similarly, a role defined for FSANZ regarding food fraud, if this were to proceed, would need to ensure minimal overlap with competition watchdogs and enforcement agencies.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

See INC's response to Question 2. In summary, INC does not support a role for FSANZ in relation to sustainability. Other government agencies in both Australia and New Zealand are better equipped to deal with these issues. Many food companies are embracing sustainability in their operations. INC considers it an unnecessary diversion of resources for FSANZ to also have a formal role in sustainability.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

INC believes that economic opportunities for Australian and New Zealand industry from sustainability will be captured over time WITHOUT FSANZ's involvement but rather from broader drivers such as consumer demand, climate change legislation etc. An involvement of FSANZ could generate costs through diverting scarce resources and diverting focus from food safety, public health protection and trade objectives.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

INC considers other stakeholders to be better placed to respond to this question due to the scope of INC. However, from a principles perspective, FSANZ's activities should better recognise indigenous culture and food expertise. Whether the "framing" is right will depend on how the recognition is incorporated. The FSANZ Act should include a Treaty of Waitangi clause along the lines as included in the New Zealand Conservation Act 1987 as should the Treaty between Australia and New Zealand.

The key difference between New Zealand context and the Australian context is that, as the foregoing sets out, the New Zealand Government has a constitutional obligation in relation to Maori under the Treaty of Waitangi. This would be important to consider.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Not applicable to INC.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of the elements in this component.

In relation to elements not covered by questions the following is provided:

Implementing a decision-making tool to determine instrument that can most appropriately deal with the identified problem – INC is supportive of tools that contribute to determining the instrument that can best assist with dealing with an identified problem. However, INC considers there are other elements that should be prioritised ahead of this element.

Risk could drive processes in relation to applications and proposals – It is not clear how this proposal would operate but approaches that would streamline the application and proposal process are strongly supported in principle.

Creation of new pathways to expedite low-risk amendments to food standards – as with the previous proposal, it is not clear how this proposal would operate but approaches that would expedite amendments to food standards are supported in principle. However, INC has 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. INC also continues to support industry self-substantiation of bringing low risk products to market.

Abolition of the pathway for high level health claims – INC is generally supportive of abolishing the pathway for high level health claims but seeks reassurance that high level health claims might still be available since there are a number of pre-approved high level health claims in the Food Standards Code and there may eventually be an application in the future.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

INC strongly supports decision-making being delegated to the FSANZ Board. After two decades of operation, it is very clear that Minister's should not be delving into the minutiae of the likes of food additives, processing aids or low risk labelling and composition matters. These matters should be delegated along with minor adjustments to Standards and technical amendments.

INC is concerned that if delegation was decided on a case-by-case basis no improvements in efficiency would be seen. INC supports the development of a clear decision-making framework where lower risk decisions (eg processing aids) are automatically delegated away from Food Ministers Meetings to the FSANZ Board.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

INC considers Codes of Practice or Guidelines would be beneficial but would want to see these as collaborative developments featuring consultation provisions. We would also support partnering with other industry and non-industry agencies that might have expertise in the subject area to contribute to development. Some areas that could benefit from Codes of Practice or Guidelines include:

• microbiological measures
• processes related to novel foods and nutritive substances.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

INC has not been able to identify any data on the cost of compiling evidence to support a comprehensive risk assessment by FSANZ.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This is challenging to quantify given it includes elements such as the debilitating effect of loss of innovation, time to get products to market and loss of international competitiveness. INC suggests that, as a starting point, the average cost of paid applications would be useful to assist with quantification of potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments.

We note this is limited to risk assessments and we support this limitation.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component but more detail is needed to assess this proposal. INC considers that development of this concept should be a secondary priority to other amendments to the FSANZ Act that have the opportunity to deliver tangible benefits with greater immediacy and certainty.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

INC is aware of technologies and expertise that is available to New Zealand businesses through the Food Innovation Network (which includes five open access food and beverage production facilities). The Food Innovation Network could be considered a sandbox facilitator in so far as the products developed with the Network might be tested in the market for demand. The processes and product development in these facilities could also provide an indication of the range of examples that might utilise regulatory sandboxes. The production runs are contained, small and particularly assist small to medium sized businesses.

Another area that might utilise regulatory sandboxes could be any relevant work emerging from the New Zealand Food Safety and Science Research Centre (NZFSSRC). Another alternative might be to allow product to be brought into the market whilst a request for an urgent application is processed.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component but there are reservations as noted in the response to the following question.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

INC is generally supportive of FSANZ collecting data that could be consolidated and communicated. INC is not certain this needs to be legislated.

This Component also proposes that FSANZ be resourced to undertake more timely, holistic, and regular reviews of food standards. INC supports FSANZ being resourced to undertake reviews of food standards but that the standards to be re viewed should be prioritised to ensure standards are not reviewed for the sake of review – it should not be a 'tick the box' approach across the Australia New Zealand Food Standards Code.

Equipping FSANZ to coordinate food safety research across Australia and to develop strategic relationships with New Zealand food safety research entities is supported. This co-ordination is undertaken virtually in New Zealand to ensure that agencies retain control over their research programmes but that duplication is avoided and gaps can be identified and addressed.

INC is cautious about positioning FSANZ to be the guardian of key food safety databases. It is unclear to what extent this would extend between the Australia and

New Zealand as both countries maintain composition databases for example. Both countries compile nutrition data although we note New Zealand's data is so out-of-date as to have questionable utility. In relation to food safety data, all jurisdictions maintain food safety databases and New Zealand's are collected under statute and unlikely to be shared. More information and research around this proposal is required.

In relation to FSANZ collating and creating consumer-facing food safety education materials, INC would support this if FSANZ receives additional resourcing sufficient to cover this activity in addition to its other activities. It may also be appropriate for this activity to limited to Australia.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component if it was independently resourced.

We note it is proposed that FSANZ and the Food Ministers could undertake periodic joint agenda-setting to agree on proposals on which to focus. INC considers an annual or biannual agenda item on the Ministerial Meeting agenda prepared by FSANZ, to provide Ministers with the opportunity to comment on the prioritisation, would be appropriate. Since Ministers have political affiliations and membership regularly changes, it is likely that their interests in the FSANZ work programme that could change also. In such a circumstance, and to ensure some stability over time, criteria for setting and changing the programme around proposals would be critical.

In relation to the prospect of FSANZ partnering with other government to make intelligence-led decisions and reduce duplication of efforts or 'fragmentation across the system', it is not clear what fragmentation is referring to. The suggestion is that earlier involvement with FRSC could be beneficial. FSANZ is well placed to have permanent membership of FRSC. Collaborating with enforcement agencies to identify emerging risks could be a role for the Implementation Sub Committee on Food Regulation (ISFR). In terms of activating the appropriate regulatory response, clearly the final decision rests with jurisdictions.

The proposal is that enhanced collaboration around information sharing could also extend to international partnerships with overseas jurisdictions. INC understands that this already occurs with Health Canada and with the European Food Safety Authority. There is no reason why other agencies could not be included although servicing partnerships takes time and resources so perhaps two or three such arrangements is appropriate.

It is proposed that FSANZ's databank could be available to drive high-quality research and policy work both across and outside government. INC would expect that FSANZ would be using its own data to inform its project work. The request for project work from jurisdictions should be limited as this diverts resources from priorities for standard setting.

In relation to providing access to data to the general public including other researchers, so long as anonymity of source was preserved for industry and individuals to ensure commercial information was protected and privacy was preserved, there seems no reason why selected data should not be publicly available.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

INC considers that access to data should be free of charge. If charges were applied, this may lead to issues around ownership and could be a disincentive to external parties providing FSANZ with data.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component but has reservations about reducing Board numbers.

INC supports legislative amendment to support more efficient and effective governance such as streamlining nomination and appointment processes for board members. We do not think that virtual or face-to-face meetings need legislative change as they have not to date. We consider a mix of virtual and face-to-face meetings to be efficient as was the practice with telecons prior to COVID 19.

INC does not support a smaller Board. The scope of FSANZ's work is very broad and warrants a Board of 12 members noting that additional expertise can still be included on a case-by-case basis. With a predominance of virtual meetings, cost is limited to fees. We note this has been assessed as A$1.2m over 10 years.

In relation to investment into business solutions that might help staff work more efficiently, this would depend on form and cost. Again, we do not consider this requires legislative amendment.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

On balance, Option 2 would be positive for industry and would have flow-on effects for consumers through reduced costs of doing business. The key risk is for implementation generating unexpected consequences, but this is the case for any legislative change. We have identified under each component, potential issues/risks which we recommend are addressed before legislation is drafted.

For industry there is the greater risk associated with components of this Option strongly supported by industry not proceeding. We have not assessed the magnitude of these.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

INC agrees with the assessment of costs and benefits of Option 2 presented in the Draft Regulatory Impact Statement and is generally supportive of this component. Benefits for FSANZ would also have flow-on benefits to industry in terms of operational agility, improved flexibility through new pathways to change food standards beyond the capacity savings which could be reallocated to other areas of priority work.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

INC is not aware of data to assist in quantifying the magnitude of these costs and benefits.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

INC does not believe the Act should provide for more of FSANZ's work with industry to be offset through cost recovery mechanisms. It is not clear what 'types of applications' might be broadened for which FSANZ charges fees and, in any case, this would have the greatest impact on any notion of making applications by small to medium businesses.

INC does not believe the provision of interpretative advice should attract fees since this would mean unequal access to the legal system. We provide an example from the New Zealand Inland Revenue Department [tax office]:

"The Public Rulings Unit is a division of the Office of the Chief Tax Counsel ("OCTC"), Inland Revenue. The Unit's key function is to determine and disseminate the Commissioner of Inland Revenue's position on various tax issues through the issuing of primarily binding public rulings, interpretation statements and interpretation guidelines…. The Unit was established to provide a real focus on, and commitment to, the provision of public rulings and statements, given their important role in clarifying areas of uncertainty and fostering compliance….the overriding aim is to provide greater certainty for taxpayers and their advisors on difficult areas of taxation law and sometimes on general areas of law that impact on taxation outcomes …"
https://www.taxtechnical.ird.govt.nz/general-articles/inland-revenue-s-public-rulings-unit

The only other activity INC has identified for which FSANZ might cost recover is in relation to preparing the substantiation dossiers for general level health claims for Australian business (since New Zealand business is adequately supported in this area by the New Zealand Ministry for Primary Industries (MPI).

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

INC considers that cost-recovering from industry for a broader range of activities would exacerbate an existing disparity between large and small to medium businesses in terms of access to activities. As well, in relation to claims, MPI provides significant support to industry in the development of dossiers to support claims although FSANZ might undertake this activity for Australian industry and might charge for doing so.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

INC has not made any application to FSANZ but actively engages in consultations on applications relevant to INC's scope of interest.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

INC as an association engages regularly with the food regulation system and does not encounter barriers in the process. We experience frustration that proposals such as Proposal P1028 that have taken so long to progress but appreciate the resource constraints that FSANZ operates under. The cost and complexity of the application process (such as gathering sufficient consumer evidence) is also considered a barrier by INC members.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

INC members are likely to engage more regularly with the food regulatory system if new pathways are introduced as proposed in this Draft Regulatory Impact Statement. New pathways that expedite low-risk amendments to food standards are most likely to result in increased levels of engagement.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Negative for New Zealand, mixed for Australia. New Zealand members of INC are not supportive of FSANZ co-ordinating food incident and food recall responses in New Zealand. Some Australian based INC members are supportive of this component, but others are not.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Members advise that this question would be better framed around the cost of the interface with government and other agencies in relation to food incidents or recalls. For example, the action taken by the NSWFA over FOS (fructo-oligosaccharides) has had a long standing chilling effect on innovation in industry. The communication and advertising costs should be available. The damage to reputations is a cost that is difficult to calculate, can be tremendously significant and highly variable.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

No. New Zealand has a system involving a single regulator that operates throughout the country. There is no advantage and indeed disadvantages for such a function to be conducted by FSANZ in New Zealand.

In Australia, some jurisdictions have efficient systems that work well for industry in what is always a stressful process. Other jurisdictions present as significant barriers to industry trying to protect consumers.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

INC is generally supportive of this component and agree that FSANZ could reduce interpretive uncertainty through the provision of greater non-binding guidance on food standards – including statements of intent for food standards and binding rulings on aspects of the standards that have proven to be problematic/interpreted differently.

INC is also supportive of FSANZ being resourced to update and maintain industry guidelines.

In relation to resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims, Australian members of INC support this proposal.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

INC is aware there may be data available from members to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

INC considers enforcement activities for Australia undertaken by FSANZ in limited areas might be beneficial to Australia. There would be no benefit to New Zealand which already has a single national enforcement agency for enforcement of the New Zealand relevant chapters of the Australia New Zealand Food Standards Code.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

In fact our response is "Mixed". INC considers it would negative for New Zealand but may have value for Australia. We note that by comparison, the EU does not undertake joint enforcement across nations within the EU but leaves this to each sovereign nation.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No. The jurisdictions are best placed to answer this question.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

INC notes that even though the positions Australia and New Zealand take on the international stage in relation to food related matters are often similar, this is not always the case. Australian and New Zealand are two separate countries with differing issues (as evident with respect to different issues raised with the World Trade Organisation (WTO) including on issues in dispute between New Zealand and Australia). The two countries are competitors in the global market. Both countries need their own voice in international fora. Other reasons against this proposal include:
• it is beneficial to have two nations advocating for a common position rather than one;
• positions are generally respective government positions and loss of sovereignty is a significant concern;
• different nations take on different roles in international fora that reflect particular interests and strengths.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

There would be substantial costs involved in establishing a bilateral enforcement function for FSANZ. We would point out that trans-national boundary law enforcement is generally reserved for global interests such as the International Court of Justice (which took several decades to establish), the International Criminal Court and International Tribunal for the Law of the Sea. All are formed by treaties between nations or under the authority of an international organization like the United Nations. We are of the view that costs for a trans-Tasman enforcement function (in terms of legal inputs alone) would be prohibitive.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

INC considers none of the functions within Option 3 should be supported by cost recovery. They are all public good activities including Trans-Tasman guidance, and for Australia: recalls, enforcement and international presence.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The key omission for aligning the Aspirations for the Food Regulatory System with the draft Regulatory Impact Statement is facilitation of trade in both. In a summary document on the Aspirations, trade was not mentioned at all.

Continuing to strengthen trade remains a priority Aspiration for INC and should be a collective Aspiration going forward. Under this Aspiration, international harmonisation and influence on the international stage is a better fit. The trans Tasman market should be looking outwards to global markets with strength. As well, harmonisation of terms/definitions with other markets promotes consistency between the Food Standards Code and other regulated markets and has the potential to alleviate regulatory/trade barriers imposed by importing countries.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

4. There is no single ‘highest priorities’ but rather the suite of components that could together deliver significant efficiency gain and benefit across the board. For this, the bulk are in Option 2 simply because of the immediacy of delivery of benefit.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The key omission for aligning the Aspirations for the Food Regulatory System with the draft Regulatory Impact Statement is facilitation of trade in both.

Continuing to strengthen trade remains a priority Aspiration for INC and should be a collective Aspiration going forward. Under this Aspiration, international harmonisation and influence on the international stage is a better fit. The trans Tasman market should be looking outwards to global markets with strength. As well, harmonisation of terms/definitions with other markets promotes consistency between the Food Standards Code and other regulated markets and has the potential to alleviate regulatory/trade barriers imposed by importing countries.

While trade is missing from the Aspirations, the draft Regulatory Impact Statement does propose inclusion within the objectives of the Act which underlines recognition of the importance of this activity. It should be included in both documents. In a summary document on the Aspirations, trade was not mentioned at all. The broader challenges related to the global trade and the specific challenges for both countries and for industry are trade and commerce, innovation, competition and regulatory burden/compliance. These need to feature in the future for FSANZ and the FSANZ Act.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

None

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-31 21:35:19**

About you

What is your name?

Name:
Bob Phelps

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Public interest advocacy

What is your organisation?

Organisation:
GeneEthics Ltd

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

GeneEthics was founded in 1988. Over 5,000 constituents. Not for profit registered with the ACNC. Focus on sustaining the environment and public health, with particular reference to all matters related to techniques for manipulating human, animal, plant and microbial genomes, the genetically manipulated organisms and industrial products produced, synthetic chemicals, and other emerging and convergent technologies.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

FSANZ
1. fails to fulfill its responsibility to help support population health and wellbeing
2. does not apply the precautionary principle and uses the weak and imprecise concept of 'substantial equivalence' to justify its decisions on safety, which is narrowly defined
3. does not monitor the short or long term impacts of its regulatory and policy decisions, especially of novel and synthetic foods that have scant history of safe and efficacious use
4. assesses new food ingredients (e.g. synthetic processing aids, additives, colourings, flavours, etc) in isolation, without due regard to their cumulative and synergistic impacts
5. has a passive role in setting MRLs for the residues of synthetic farm chemicals and other contaminants in the food supply, ignoring their synergistic and cumulative impacts
6. accepts industry's untested evidence and data, unpublished and not peer-reviewed
7. uses regulatory science that fills data gaps with best guesses and assumptions
8. dismisses expert critics and independent scientific evidence when this does not accord with its policies and preconceptions

9. is unresponsive to well-founded civil society concerns and shopper preferences, especially about the food labelling and information, essential to fully-informed decisions
10. smugly rebuts civil society and expert evidence, without discussion or engagement
11. uses opaque and closed decision-making, only subject to applicant review
12. accords a right of appeal from its decisions only to applicants.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Food sustainability in the food regulatory system should be firmly grounded in every person's right to food - a healthy, wholesome and fresh diet from all food groups, for everyone. Food regulation should encompass food security and sovereignty, community-wide health and well-being, economics (including food accessibility and affordability, but not industry promotion) and the social impacts of food system failures and disruptions such as urban food deserts.

We asked that the Productivity Commission explore food supply chain system disruptions of which regulators should also take account. This document may be of use. https://www.extension.iastate.edu/smallfarms/cast-releases-commentary-economic-impacts-covid-19-food-and-agricultural-markets and https://www.cast-science.org/publication/economic-impacts-of-covid-19-on-food-and-agricultural-markets/

We agree that "Environmental sustainability contemplates the impact of agricultural practices, food processing, distribution, packaging, and other activities in the food supply change on climate change, biodiversity, soils and waterways, and ultimately future food security." These values and goals should also be embedded in the food assessment and regulation system.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Only what the news media (with the notable exception of NITV) scantily reports and rarely celebrates. The $100 billion fantasy for Australian agriculture in 2030 is completely ill-conceived. It commits to misusing and misallocating Australia's scarce soil, water and natural environments for short term, unsustainable, industrial greed.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The FSANZ Act allows the regulator to continue doing a sub-standard job of meeting the goals we already enumerated, and repairing its systemic problems and failures. Serving the public interest must be its top priority but it is in thrall to the transnational ultra-processed and junk food industries.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We all suffer the consequences of this injustice and social blight. The status quo will allow the quality and accessibility of food in Australia to further decline. That 1.5 million Australians are food insecure and dependent on charity to feed their families is irrefutable evidence that the food system, including food regulation, are now failures. For instance: https://aifs.gov.au/cfca/publications/understanding-food-insecurity-australia even the Australian government knows there is a serious problem of food insecurity but does little to ameliorate this unacceptable situation!

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

This is a diversion from the core failures of the food regulatory system. This question, to "quantify the cost of delays when bringing products to market through the current process," assumes there are delays, implies there are extra costs, and invites ultra-processed ingredient makers to demand a fast track to expedite their 'products' - not foods - into the food supply.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

We want a system that gets real food (not food-like substances) to real people.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

FSANZ will continue to poorly serve the genuine food, health and well-being needs of The Australian and NZ communities.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Most do very little and are largely unresponsive to the rights of their citizens. Monitoring, surveillance and enforcement, even of FSANZ weak policy decisions and priorities, is a fatal flaw in the existing system. But preventing the entry of unhealthy synthetic substances into the food supply is preferred to counting and comensating the consequences of ill-health and harm afterwards. The burden on the health care system of junk foods is just one community impost.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

"To clarify objectives and functions and reflect these in the Act" may be positive, but only provided the community were fully engaged and empowered to participate in setting the goals and parameters of the system. Industry food technology innovations, processes and products must not be allowed to dominate the changes. Applicants and regulators must be accountable and responsible for their decisions, which the public should be able to appeal.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

Broad.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

This should be outside the scope of the food regulatory system and its legislation.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Ask the First Nations people of both jurisdictions to fully participate in a thorough process to explore these questions. Only those communities can say what the 'right framing' may be, when empowered and resourced to do so. Any other process will invite another ripoff of their rights.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

The regulatory system and FSANZ have no legitimate role in this.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

"Facilitate risk-based approaches to developing or amending food regulatory measures." This is negative because 'risk-based' in the context of regulatory science ignores bigger and longer term hazards (e.g. the systematic degradation of public health and well-being) and assumes that all risks are manageable (e.g. by limiting the % of an ingredient or requiring labelling). Responsibility and accountability are also transferred from the applicant to the shopper, which is unacceptable

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No, the FSANZ BOard already has too much power. Delegation should not occur and the Food Minister's Meeting should be more proactive and public in making the final policy decisions itself. The role of the FSANZ Board is unsatisfactory and unacceptable as it is a hand-picked coterie of individuals who are not answerable or accountable to the public. Their deliberations and decisions are also largely opaque.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

None. Standards should prevail.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No. Again, this betrays a lack of public interest priorities and focus which we reject.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

We reject FSANZ being accorded such ability. However, if FSANZ were given such powers in the Act, they must apply:
* this must not create a loophole to fast track ingredients into our food supply;
* where the weight of counter evidence or the assessments in other jurisdictions basically disagree, then the application should be rejected;
* both positive and negative risk assessments in ALL other jurisdictions must have weight, especially where there is disagreement, say, between Europe and North America;
* evidence from all other food regulatory systems must be entertained, not only others that 'hold hands' with FSANZ, exchange staff, collaborate, and have 'understandings';
* FSANZ must not be able to cherry pick the assessments that suit it and industry.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

"Build in flexibility to create bespoke regulatory sandboxes"

We absolutely reject this proposal. It would fundamentally compromise the few shreds of independence that FSANZ may have from Big Food. It directly counters the impartiality and objectivity that the public still expects of FSANZ but which it rarely displays.

FSANZ could not be trusted to protect the public interest in such a compromised arrangement.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

None!

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

"Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation."

This would continue FSANZ narrow focus. Good intelligence on all aspects of food from seed to spoon should be key components of fulfilling FSANZ role, as they and their approach appear purely technocratic. We expect FSANZ to make broad and robust assessments and good regulatory decisions based on robust food intelligence - not just on safety - but it repeatedly fails.

Within its narrow safety and risk framework, the much broader issues of community health and well-being are marginalised and ignored. That is not in the public interest and the vacuum should be remedied.

A full review is overdue, of the suite of expertise that FSANZ officials collectively share. Do they know, value, understand or care at all about the broad context issues of community health and well-being and their responsibility to positively affect them?

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

Not without its scope being much more broadly drawn, as we assert above. The web abounds with great food policy and regulatory ideas and critiques that FSANZ appears to ignore. For instance, we recommend Marion Nestle's site, daily blog and books. https://www.foodpolitics.com/about/

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

"Foster new approaches to working with other agencies, with a focus on intelligence-sharing"

This may be a worthwhile idea if also includes sharing independent expert and civil society information and expertise.

We are greatly disappointed in what is in the public domain of FSANZ working with the APVMA on setting MRLs and the OGTR on Genetically Manipulated foods.

FSANZ sullies its reputation when it recruits 'experts' with conflicts of interest and without broad and independent perspectives to its advisory committees.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Ask them to pay for it.

Such information should be in the public domain and freely available to all who want to access it. That might enable FSANZ to become a credible information repository and provider, instead of a peddler of questionable industry data and disinformation.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

"Streamline FSANZ's governance and operations."

This sound like code for short cuts and fast tracking.

FSANZ governance and operations are closed and opaque now so we would value any improvements provided they led to more opportunities for genuine public engagement and participation.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

This proposal would likely be another bonanza for transnational junk and ultra-processed food corporations. That would directly impact the public interest negatively.

This government's de-regulatory agendas are run from The Critical Technologies Policy Coordination Office (CTPCO) in the Department of PM&C, so we see a high likelihood that the consequences for the public would be enormous.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

"Option 2 would involve significant changes to FSANZ's operations, in particular through establishing new processes and procedures for new and refined pathways for changing food standards and enhancing collaborations at interfaces with industry, jurisdictional regulators and policy development stakeholders."

This would be a recipe for fast tracking novel foods made using new food creation and processing technologies into the food supply, for the benefit of the globalised food industry.

This is a clear statement that the community and the public interest would be even further sidelined! The health system, the health and wellbeing of many members of the community, and the quality and healthfulness would all bear the brunt.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The government already has the data on the costs of bad food policies but FSANZ and its fellow travellers are unresponsive to the evidence. They routinely permit substances into the food supply that clearly harm health and well-being

How much does Australia spend on health? Australia spent $185 billion on health goods and services in 2017–18, or $7,485 per person. Between 2000–01 and 2017–18, total spending on health increased in real terms (after adjusting for inflation) from $91 billion to $185 billion—an average growth rate of 4.3% per year. https://www.aihw.gov.au/reports/australias-health/health-expenditure

The food and beverages we eat and drink (our diet) play an important role in our overall health and wellbeing. Diets that provide insufficient or excessive amounts of energy, nutrients and other components can result in ill health. Health conditions that are often affected by our diet include overweight and obesity, coronary heart disease, stroke, high blood pressure, some forms of cancer and type 2 diabetes.
https://www.aihw.gov.au/reports-data/behaviours-risk-factors/food-nutrition/overview

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Cost recovery for regulation should always be at arms length from applicants. Fees must go to government revenue collectors, with regulators well resourced to assess and regulate through budgetary allocations.

Regulators are already in bed with industry and requiring them to also collect revenue from applicants further compromises their independence. It also adds fuel to their failure of commitment to the public and and the public interest.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Part of the cost of doing business.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We are persona non grata.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Secrecy, obfuscation, indifference, hostility, rejection .... etc.

Our numerous well-documented representations are routinely rebuffed in a paragraph or two at the end of approval documents.

Unless FSANZ and its Act finally change for the better, we expect our 30+ years of attempts to positively engage with this regulator will end. We are not inclined to waste our time, energy, resources and expertise on a totally unresponsive instrumentality.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Just the opposite!! If nothing changes for the better, we expect to disengage and adopt other modes of action.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

"Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative"

Enabling FSANZ, 'in consultation with the States and Territories, or on its own initiative to coordinate action to respond to food incidents and food recalls' may be useful. coordinated responses will be superior to piecemeal responses.

FSANZ and the jurisdictions adopting uniform policies and practices that encourage or requiring food chain participants and the industry to adopt more precautionary and preventative systems, with early warning mechanisms, may also be helpful.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The several well-publicised cases where companies have gone out of business as a result of harm and recalls are stark examples of worst case scenarios.

FSANZ shold engage all food businesses and the insurance industry seeking to pre-empt and prevent the necessity for food incidents or recalls.

The costs of thorough and timely information to the shopping public should also be factored in as essential costs.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

It seems clear that NZ is not well served in many respects by the Trans-Tasman arrangement as it is always outnumbered and out-voted in the Minister's Meeting and other forums.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

"Provide for FSANZ to give greater guidance on food standards".

Yes, to everyone. A statement of intent , and a library of interpretations and rulings publicly available, would be useful. Assisting the food industry to formulate health claims for food products should remain outside the scope of FSANZ actions.

FSANZ guidance to the public on Food Standards - what they mean, how they work and their effects on the food supply - have always been inadequate. This urgently needs changing so the community can more fully engage with food policy and regulation.

Clear definitions and guidance on what are foods and what are not would assist the public. Functional foods and those for special dietary requirements have blurred the boundaries between food and therapeutic goods. Clarity is needed for all parties.

General practitioners are generally untrained and uninformed about food and healthy eating, so cannot discuss healthy diets with their patients. Yet they are among the most obvious agents for change to the poor eating habits that lead to morbidity.

Some researchers are at long last asking" Should doctors prescribe fruit and vegetables? New research suggests that providing healthy foods in a medical context can help some conditions." https://cosmosmagazine.com/health/nutrition/should-doctors-prescribe-fruit-and-vegetables/ The paper https://academic.oup.com/advances/advance-article-abstract/doi/10.1093/advances/nmab039/6274221

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Additional costs are likely to be small as most jurisdictions do not have proactive and rigorous programs of food standard enforcement.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

Don't know.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

"Position FSANZ to take on an enforcement role"

Unsure but the present system clearly does not work and the default of essentially self-regulation is not acceptable. Whoever takes on monitoring and enforcement cannot do it alone. The public, wholesalers and retailers should be among the system's best eyes and ears but it appears largely unresponsive to their input, often dismissing local intelligence as anecdotal or hearsay. The whole system needs fine-tuning and enhancement, with clearer lines of responsibility and accountability.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

"Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage"

"FSANZ is part of an international network of standard setters and other expert bodies who work collaboratively to share independent, science-based insights about food safety and public health protections." This includes input to Codex committees and APEC.

Such harmonisation processes on the world stage tend to produce in-group thinking among like-minded officials and transnational industry interests, horse-trading on policies, and trade facilitation.

These international affairs are not generally in the public interest and their influence on domestic food standard setting should be minimised.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

FSANZ primary focus should remain on best serving the needs of the citizens and residents of the two national jurisdictions. Other instrumentalities are charged with food marketing, promotion and trade, and these should remain outside the scope of FSANZ and its Act.

Enabling FSANZ to better strut the international stage makes some sense in the context of a globalised food system but it should remain primarily in service of the public and the public interest, not the food industry. We expect FSANZ and other food regulators to be the impartial champions and referees for the health and well-being, as well as safety, of everyone.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Cost recovery only to government, not directly to FSANZ.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Food and food regulation must be central features of all Governments' Community Health promotion and repair strategies.

A top priority must be ameliorating the rampant decline in community health and well-being that Big Food's aggressive and unfair promotion and peddling of harmful junk and ultra-processed food-like substances causes.

Facilitating community participation in every aspect of the whole food system should also be a priority.

Accountability and responsibility for harm to public health and well-being must be sheeted home to policy makers and the industry.

Strip Big Food of its undue political influence.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Adopt those that serve the public not private interests!

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. Fail.

Options 2 and 3 propose a variety of disparate changes that are not mutually exclusive or exhaustive. Most components do not clearly endorse, enhance or operationalise the rather empty motherhood statements in the Aspirations documents.

The Aspirations infographic is a formulaic and technocratic account of a stunted vision for the food regulatory system. For instance, the vision is 'focused on improving and protecting public health and safety', nothing more. 'Our future' is a litany of unstoppable food trends that pose challenges, but no solutions are proposed. FSANZ never says no to Big Food.

The document shows its true colours by only making brief reference to protecting, not enhancing or promoting, 'public health', while the urgent needs of 'community' and the goals of social or personal 'wellbeing', rate no mentions at all. No public 'engagement, consultation, or participation is envisaged to back 'Engaged and passionate stakeholders' or to win the 'Consumer confidence and a strong international reputation' that FSANZ craves.

Flawed regulatory science, based on Big Food's data, is not a sound basis for achieving the 'Robust, evidence-based standards' that are aspired to.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Our critique and comments on the Aspirations document are attached FYI.

The FoodBank Hunger Report 2020 https://www.foodbank.org.au/wp-content/uploads/2020/10/FB-HR20.pdf?state=vic provides solid evidence that our food system and supply chains, including the regulatory system, are disrupted and dysfunctional. everybody has a right to food without having to resort to charity or junk foods.

The Food Regulatory System must be redesigned so it is responsive to community needs and aspirations for the safety, health and well-being that the food supply should supply under FSANZ stewardship.

Globalised Big Food must not be given free reign to self-assess or regulate, or have its aspirations achieved ahead of the the public interest.

Upload any supplementary information here. :
GeneEthics food system Aspirations sub 220121.pdf was uploaded

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May 18, 2021

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Comments on the document Nous Group | Modernising the FSANZ Act | 10 March 2021

Context:

The comments we made on November 20, 2020, in response to and earlier phase of this process, remain relevant now and we ask that they be favourably considered and taken into account.

Government and its instrumentalities set unreasonable parameters for under-resourced civil society groups and interested members of the public to participate in its so-called consultation processes. To expect serious comment in detail on complex policy documents that are hundreds of pages long, especially in the short time frames allowed, is unreasonable and anti-democratic.

We are also dismayed that this document was prepared and published without civil society participation so that many of the proposed measures seek to continue and to expand the industrial food system's 'business-as-usual' approach when a profound revolution of ideas is needed.

Policy Document:

The document purports to address and offer solutions for three broad Policy Problems:

- The Act does not support efficient and effective regulation
- Legislation does not enable a strong, resilient, and agile joint food standards system
- Current arrangements undermine the power of a single, joint food standards system

We don't agree that it is the role of the Act to enable the food regulatory system to:

> "… support Australian and New Zealand food businesses to maintain and enhance their competitive advantage in international markets," nor to provide a "remit for FSANZ to extend Australia and New Zealand's influence on the international stage."

These roles are not the responsibility of our food regulators.

The Option 2 proposal to "Build in flexibility to create bespoke regulatory sandboxes" is also unacceptable. A regulatory sandbox generally refers to a regulatory "safe space" that creates an environment for businesses to test products with less risk of being "punished" by the regulator for non-compliance, to allow private firms to pilot test innovative food products in a controlled environment (e.g. exemptions, allowances, time-bound exceptions etc.) overseen by regulators.

This is a recipe for food regulators and food processors to jointly create case-by-case rules that are designed to suit applicants, without reference to independent experts or the interested public. Applicants would be allowed on very flexible terms to try out on unsuspecting shoppers novel manufactured foodstuffs that have no history of safe use, as they are new to the food supply.

It appears that sandboxes would be primarily market research and promotional exercises conducted with regulator agreement to bending the regulatory rules. Again, this should be outside the regulator's brief to act in the public interest and as the public's objective and unbiased referee. We provisionally accept that having FSANZ an "engine of food safety intelligence" and "intelligence sharing" with other agencies would be useful. However, it would need to be very widely defined to embrace not only safety in a narrow sense but human health and wellbeing goals too.

For instance, FSANZ intelligence gathering should include an extensive knowledge base on the dietary causes of illness, including through consumption of ultra-processed foods, New Australian research indicates that in a medical context prescribing and providing healthy foods – particularly the requisite daily serves of fresh fruits and vegetables - can help improve some medical conditions. They examined 13 programs that either subsidised or directly provided healthy foods as a form of medical treatment, and found overall that participants - especially food insecure people - who ate more healthy foods also improved on a few different health indicators.[1]

FSANZ should be gathering intelligence as the basis for more robust regulatory responses to the epidemics of obesity, diabetes and other degenerative and inflammatory diseases such as irritable bowel syndrome – some strongly suspected of being associated with disruption of the gastrointestinal biome from over-eating refined, ultra-processed and synthetic food-like substances.

FSANZ's intelligence gathering would also be substantially enhanced if it were empowered to require applicants to provide additional robust scientific evidence with their applications. The Act should also empower FSANZ to commission key research so that it could become more pro-active in dealing with innovations and change, instead of remaining reactive.

We are not among those who "voiced reservations about how FSANZ will maintain its science-focus and independence in the context of a much broader statutory remit." Using regulatory science and filling information deficits with best guesses is not acceptable when the tried and true scientific method is available and could just as well be applied. Accepting data from applicants that has little more substance than anecdotal evidence, but rejecting such accounts of community or personal experiences, is unfair and discriminatory.

Dramatically improving FSANZ's regulatory independence is why we reject any concessions to "a lighter-touch, industry self-certified pathway," especially as the document concedes that "For consumers, costs include … the self-certified pathway where risks may be elevated." Even with full openness, accountability, and assured compensation for any harm done, self-certification would be an unacceptable invitation to the globalised processed food industry to be afforded the benefits of an even weaker and more pliable regulatory regime.

We provisionally agree that FSANZ could "take on an enforcement role," nationally and internationally across the Tasman as state and local governments and regulators commit scant attention and resources to the enforcement of food regulations. However, we would want to see a detailed assessment of how centralized enforcement would operate effectively.

We are among the civil society organisations that support changes to the Act and to FSANZ's modus operandi but we also share the "clear words of caution" that others have expressed. We strongly agree that

- Population health and safety should never be compromised. (But we are very disappointed that FSANZ has done little to protect and promote the communities health and this must change.)
- The joint nature of the regulatory scheme should not be weakened. (Aotearoa NZ and the interests of all its citizens – including its First Nations People - are outnumbered and at a

[1] Phiddian E, Should doctors prescribe fruit and vegetables? Cosmos, 17 May 2021. https://cosmosmagazine.com/health/nutrition/should-doctors-prescribe-fruit-and-vegetables/
The abstract of the full Review and Meta-Analysis is here. https://academic.oup.com/advances/advance-article-abstract/doi/10.1093/advances/nmab039/6274221?redirectedFrom=fulltext

distinct disadvantage in joint forums. Australia's First Nations people must also be enabled to positively engage with the food regulatory system as there health is most profoundly affected by poor regulatory decisions, as are those of multicultural communities. This is an opportunity for changes that should be prioritized.)
- FSANZ's independence and science-based approach is a key strength. (We seriously question FSANZ independence from processed food industries. It should serve the public interest but in our view does not. We also reject its regulatory science and science-based approach to regulation. Its decisions lack rigour and pander to its clients. The review of the Act must seek to fix both of these policy problems.)
- Multiple viewpoints should be considered. (This is a very worthy goal and any changes to the Act that can make FSANZ more open, inclusive, responsive and accountable for its decisions will be very welcome.)

Our Priorities for policy changes:

The most pressing policy problems to resolve through amending the FSANZ Act are, in our considered view:

- Enshrining safety, human health and community well-being – all broadly and robustly defined - as both the immediate and long-term public health goals of FSANZ, the Food Forum and the whole Food Regulatory system, while also divesting trade, markets, innovation and other noncore considerations and responsibilities to other government instrumentalities;
- Exercising complete openness, transparency, precaution and accountability throughout the food system, in all the processes of production as well as their products – especially in relation to novel processes (e.g. Gene Editing and Genetic Manipulation; nanomaterials; irradiation) and their products, which all have a scant history of safe use and limited scientific evidence of their short and long term impacts of safety, health and wellbeing;
- Programs to engage public participation, education and full knowledge of food production processes and products, including social (e.g. public health and welfare costs; epigenetic impacts of chemicals and toxins on future generations; salt, fat and sugar), technical (e.g. irradiation, synthetic biology and nanomaterials) ethical (e.g. animal mistreatment; forced labor and slavery) and environmental (packaging pollution, effluents, waste).

Our vision for FSANZ, as reflected in the revised FSANZ Act is:

> "A precautionary food regulation system, to protect and promote the safety, health and wellbeing of all Australians, with their full knowledge and participation."

To achieve these goals in the FSANZ and Regulations:

- Make improving individual and community-wide safety, health and well-being the core objectives of the FSANZ Act and the whole Food Regulatory System;
- Improve all opportunities and processes, for the timely and meaningful participation of independent experts, the interested and informed public, and civil society advocates, in FSANZ and the Food Ministers' Meeting regulatory affairs;
- Remove food industry innovation, trade promotion and market development from the FSANZ Act as they undermine FSANZ's core safety, health and wellbeing objectives and are the responsibilities of DFAT, AusTrade, and the Department of Industry;
- Put the precautionary principle at the centre of the FSANZ Act, regulations and practice, to maximize food-related safety, health and well-being;
- Require more robust evidence and data than the poorly-substantiated and self-serving information which the food industry provides in its applications;
- Move the onus of proof and advocacy for the safety, health and wellbeing of the food supply off the regulators (who must be impartial), onto the applicants, patent owners, and producers;
- Enact Ministerial and Departmental responsibility for FSANZ and Forum operations exclusively with the Health Departments in all jurisdictions, where protecting public safety, health and wellbeing are most robust;

- Adopt genuine, tried-and-true, scientific processes and principles in all FSANZ systems, to replace the regulatory science that uses unsubstantiated opinions and guesses to fill the many gaps in scientific data, evidence and understanding that applicants present;
- Enable well-designed experiments to be required or commissioned to fill such data gaps;
- Empower FSANZ to commission and fund long term epidemiological studies of agrochemical residues in the human and animal food supplies, biomonitor the human population, and explore short and longer term impacts;
- Require peer-reviewed publications to validate all company-generated data, to ensure that the results are replicable and verifiable;
- Develop standards, benchmarks and minimum requirements to replace all guidelines, industry self-regulation and assessment;
- Require registrants to annually report any adverse findings on the performance and impact of their approved products, and any relevant new scientific evidence;
- Improve the monitoring of agrochemical and other hazardous residues in foods, from farming, processing and packaging;
- Encourage and promote food safety, health and wellbeing through eating well, particularly the recommended daily serves of fresh fruits and vegetables - for everyone and future generations;
- Fund FSANZ with a Federal Budget appropriation sufficient to operate - like the OGTR – so its impartiality is not further compromised through cost recovery from food and related industries.

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Comments on Aspirations for the food regulatory system
https://consultations.health.gov.au/preventive-health-policy-branch/aspirations_for_the_food_regulatory_system/

Response ID [redacted]
Submitted to Aspirations for the food regulatory system
Submitted on 2021-01-22 20:48:39

Challenges and opportunities facing the broader food ecosystem

1 What other key challenges and opportunities are facing the food system? What other key challenges and opportunities are facing the food system?:

Other key challenges and opportunities facing the food system, to ensure it is strong, agile and responsive to emerging improvements and changes.

- Regulate in the public interest, aware that the globalised food industry seeks to minimize its costs and maximize profits, often with scant regard for community health, safety and wellbeing
- Support the public to be key stakeholders and discerning partners in all food affairs, and diminish their role as passive consumers of whatever the food industry chooses to supply
- Facilitate full community participation in all aspects of food supply chains and their regulation, as everyone has a legitimate stake in the safety, health and wellbeing that can derive from food, with the interests of regulatory partners and regulated bodies not advantaged over others
- Create and implement consistent, precautionary regulations in the public interest
- Embed the Precautionary Principle in all food regulations and the food system itself, with scientific and other data and evidence deficits resolved in favour of preventing harm, while also promoting general human health and wellbeing to serve the public interest
- Ensure the strict and precautionary regulation of novel foods and food processing techniques, especially where the scientific evidence and history of safe their
- use are scant or absent e.g. new Genetic Manipulation techniques, irradiation, nanotechnology, functional foods and all synthetic processing aids and additives
- Assess the cumulative, synergistic and long term impacts on the long term health and safety of the residues of synthetic chemicals and various other substances in food
- Treat food regulations not as a burden on anyone, but as the essential underpinnings of a social contract between governments, food regulators, producers, suppliers, and the public
- Establish a social contract which allows and enables the food industry to operate, but only provided it does so ethically and conforms to its social and environmental responsibilities
- Use the scientific method in place of the flawed ‘regulatory science’ regime that fills data gaps with best guesses and opinions, which cannot deliver on FSANZ promises of “A strong scientific evidence base (that) … safeguards a sustainable food supply, prevents consumers from being misled, and facilitates domestic and international trade by reducing uncertainty and commercial risk.”
- Regulators should play no part in facilitating “domestic and international trade by reducing uncertainty and commercial risk,” as these goals comromise the food regulators’ roles as the community’s food health, safety and wellbeing watchdogs
- Allocate research resources to the development and promotion of a Roadmap for Regeneration, including regenerative agricultural and land management
- systems that minimize climate change impacts; stem soil and water depletion, pollution, and nutrient degradation; nurture natural and cultivated biodiversity; ensure equitable and universal access to ample, affordable fresh, nutritious food as everyone’s human right, independent of charity; to regulate the behaviour of monopolies and cartels on the supply of all the inputs to

food production and processing, particularly seed, and to nurture and promote the open source alternatives
- Focus on prevention of harm and promotion of health, wellbeing and food safety, for everyone, by embedding a healthy food culture throughout food supply chains, from seed to spoon
- Only allow the use of those appropriate technologies and systems that promote food safety, health and wellbeing, and to minimize harm, while avoiding over-dependence on their use and the false assumption that technologies are infallible so require no human surveillance
- Create secure supply systems that have public confidence, to help prevent panic food buying and shortages in social emergencies such as COVID, bushfires, drought or import bans
- Encourage and resource food sovereignty, security and self-sufficiency, so that Australians are well fed from the continent's own resources, even when international trade and domestic food supply systems are disrupted
- Reinstate the APVMA's Chemical Reassessment and Re-Registration Scheme, cancelled in 2014, to review all synthetic agrichemicals every 15 years, as the USA and EU (10 years) do
- Transfer responsibility for the setting of the Maximum Residue Levels of agrichemicals in food, from the APVMA to FSANZ and the FRSC
- Nurture the workers and farmers engaged in the rural occupations on which food supply security depends, and reliably and fairly remunerate them for their crucial work, as the law requires
- Require food packaging materials and processes to deliver safe and healthy foods, without shedding chemicals into the foods, while also minimising packaging, food waste and pollution
- Define core food terms such as 'fresh' and 'natural' to mean minimally processed, not synthetic, essentially unchanged from their original state, not stored for extended periods that degrade their quality without this being apparent, and exclusive of processes and products that may alter their inherent nature e.g. irradiated fruits and veges, 60 day milk, frozen or vacuum packaged foods

Objectives and scope of the food regulatory system

2 Do you agree that the focus of reforms should be on ensuring the system is set up to support interface management across regulatory systems, enables collaborative risk assessment and triage of issues and provides a range of (regulatory and non regulatory) tools to support the system's objectives and empower consumers and industry?

- These marginal bureaucratic measures would do little to remedy the systemic dysfunction of the food regulatory system and the Australian food supply, which now:
- Fails to provide an adequate supply of affordable, nutritious and healthy food to all citizens, despite the right to food, leaving 1.5 million people – including many children - reportedly food insecure, sometimes or often going hungry and dependent on charity;
- Irreversibly and irresponsibly depletes the limited natural resources of our continent, by denuding and mining the land and misallocating dwindling water resources, to export commodities which comprise 70% of production;
- Takes little decisive action to deal with the existential crises of climate change, soil and nutrient loss, water scarcity, bushfire, drought, and dwindling oil, phosphates and other dwindling inputs.

Aspirations for the food regulatory system

3 Is there anything missing from these aspirations and high level actions?

- The public, community and their independent advocates do not appear as genuine stakeholders, so are marginalized and ignored throughout the Aspirations paper. The tepid reference to 'consumer advocacy bodies' ignores the public at large and other advocates.
- Improve public food communications, information and education, to encourage everyone to make fully-informed food decisions favouring diverse and balanced diets of fresh, nutritionally dense and minimally processed foods
- Provide the essential requirements and resources for governments, regulators and food

shoppers to work together, to effectively monitor and enforce strong food regulations and standards, throughout all food production and supply chain systems
- Provide more resources to promoting and deploying The Australian Dietary Guidelines https://www.eatforhealth.gov.au/guidelines
- Employ the US CDC's One Health approach to designing and implementing programs, policies, legislation and research in which everyone can communicate and cooperate, to realise better community-wide public health and wellbeing
- Educate, encourage and enable everyone to eat fresh and minimally processed foods, and minimise ultra-processed food-like substances – especially those high in saturated fats, salt and sugar - to help reduce the incidence of obesity, diabetes and systemic diseases as they shorten lives, diminish the quality of life, and impose great costs on public health systems
- Improve research, traceability and responsiveness to achieve food safety, health and wellbeing
- Strengthen nutrition research, to sustain and improve everyone's health, reduce healthcare costs, improve health disparities and social injustice, create new work and businesses, reinvigorate farms and regional communities, and optimize our nation's natural resource use
- Engage the Australian and NZ communities in a Member State Dialogue, leading to the UN Secretary-General's Food Systems Summit in 2021 https://www.un.org/en/food-systems-summit a global discussion on how the world produces and consumes food, as part of the Decade of Action to achieve the Sustainable Development Goals by 2030 and to explore key links between biodiversity, food and agriculture http://www.cbd.int/doc/notifications/2021/ntf-2021-007-FoodSystemsSummit-en.pdf
- Emulate in other jurisdictions, the ACT's plan to measure carbon emissions and other impacts from the production of imported and locally produced foods that are used in Canberra - their embedded energy, for instance, so shoppers could use the information to help inform their food purchase decisions https://www.canberratimes.com.au/story/7081054/canberra-to-measure-the-carbon-cost-of-food-goods-brought-in-to-territory/?cs=14225

4 Are there any aspirations or high level actions that you disagree with?

The summary of Aspirations and High Level Actions is not grounded or accessible, as it should be in response to community sentiments. For example:

- It would be unacceptable to move from government regulation to industry self-regulation and to replace strict regulation with weak and unenforceable codes of conduct, as the consultation document implies. The means of "nudging industry" will be ineffective unless the regulator also has a legal cattle prod available.
- The positive role that citizens can and should play in maintaining and promoting the quality and integrity of the food system is ignored. They would be the regulators' eyes and ears if they were given standing as informed shoppers, discerning cooks, health conscious eaters, and citizen scientists but they are sidelined.
- The food regulatory system's interface with the community is so disparate and unresponsive that most people give up after being ignored or rebuffed when they lodge complaints, question conventional wisdoms, or propose innovations.

Submission on the FSANZ Act Draft Regulatory Impact Statement From Robert Brewer, Chief Executive, Spirits New Zealand.

May 2021

Policy Problems

Please read section 3 'The problems to solve' (pages 19 - 46) of the draft Regulatory Impact Statement before answering the questions below.

1. **Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?**

   None that are not manifestly covered in the draft RIS. Having said this we do not agree with all of the definitions and resulting suggestions/recommendations that are described in the document as we detail below.

   Of particular concern is the continued discussion to find a "better" definition of public health. We believe FSANZ's core mandate should remain one that focuses on consumer safety and the safety or appropriateness of ingredients or additives in our food. We do not support what can only be described as "scope creep". Over time, public health interests have sought to use the Food Standards Code and the FSANZ process as a way to pursue a suite of other health concerns. There is no reason to accommodate this creep in a reframed Act. Rather, this Review should clarify and re-affirm FSANZ's core role as a standard setting body focused on consumer safety as it was originally designed to do.

2. **What examples or issues are you aware of in the food regulatory system regarding food sustainability?**

   We are opposed to any inclusion in the food regulatory system of matters relating to sustainability as described in the draft RIS. In our view opening our food standard setting system to a lens based on *"…the impact of agricultural practices, food processing, distribution,*

packaging, and other activities in the food supply change on climate change, biodiversity, soils and waterways, and ultimately future food security." is not appropriate in the context of this review.

The potential for including sustainability measures directly in legislation relating to food safety would add significant complexity and cost to the food regulatory system – a cost that would be borne predominantly by business.

3. What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

By law in New Zealand our government must take into account the principles and agreements under the Treaty of Waitangi. As long as these principles are being applied fairly and reasonably then Maori food production practices will be properly recognised. It is important that New Zealand's position on this is properly recognised.

Option 1: Retain the status quo

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.1 'Impacts of Option 1: Retain the status quo' (pages 69 to 74) of the draft Regulatory Impact Statement before answering the questions below.

4. **Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?**

   NEGATIVE

   We do not believe the status quo is a viable option at this time.

5. **What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?**

   As we have stated in the past and as is noted in the draft RIS, the FSANZ Act is not broken. Additionally, the current independence and technical rigour that FSANZ staff apply to fulfilling the mandate as described under current legislation is admirable. However, there are improvements that can be made – hence the need for the current review.

6. **Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.**

   Spirits NZ members responding to this consultation will provide this detail.

7. **Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?**

   No.

8. **Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.**

   Spirits NZ members responding to this consultation will provide this detail.

9. **What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?**

   As stated above the Act is not broken but is unwieldy and carries with it structural deficiencies that makes it difficult for FSANZ to carry out its role in a least cost and agile fashion. In particular the link between FSANZ, its current governance structure, the role of the Food Regulatory Standing Committee (FRSC) and the Ministers' meetings create a standard-setting environment that is –

i. Weighted in favour of Australian public health interests – particularly through representations of public health officials from Australian States and Territories; and
ii. Allows FRSC to effectively set policy guidance that restricts FSANZ's ability to act in a truly independent manner.

It is our hope that these deficiencies can be rectified through this process.

10. (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Not applicable.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.2 'Impacts of Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose' (pages 74 to 103) of the draft Regulatory Impact Statement before answering the questions below.

11. Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

NEGATIVE

We are wary of suggested changes that would broaden the definition of "public health and safety" without considerable thought being given to their concomitant impact. As stated in previous consultations we believe FSANZ's role should be structured to become more akin to Codex as a highly regarded, independent, evidenced-based technical group.

In this context FSANZ's remit would be the technical safety of food and food ingredients. To broaden the definition of this to be more akin to a public health monitoring agency is not supported.

In addition, again as previously stated, we do not believe inclusion, in any shape or form, of sustainability measures should be countenanced.

12. If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

We do not consider the FSANZ Act and FSANZ should have sustainability measures as part of its food standard-setting mandate.

13. What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

We do not consider the FSANZ Act and FSANZ should have sustainability measures as part of its food standard-setting mandate.

14. How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

New Zealand is bound by the Treaty of Waitangi to ensure the rights and culture of Maori are properly acknowledged in any policy or legislative development. This is a core sovereignty issue. Any and all changes to the Act must take this into account. Our expectation is that the Ministry of Primary Industries here in New Zealand would be responsible for this.

Once MPI have defined these cultural imperatives we would expect any and all food related matters to be treated in the same manner as all other food related matters under the Act.

15. What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

We have no comment on this.

16. Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

POSITIVE

We support the continued development of the regulatory instruments that would give rise to the three parts to this component as summarised on Page 52 of the draft RIS.

17. Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

In principle we are not averse to this proposal. However, we would need to understand the checks and balances that would be developed to provision this part of the Act as Ministerial oversight is, ultimately, a key feature of the food regulatory system.

We do see advantage in FSANZ being given the mandate to draft food standards particularly if it meant the role of FRSC was better defined – or eliminated. We also see an advantage in the principle of delegation in that it might give New Zealand more opportunity to stand apart from Australia on the development of some standards.

18. What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

This is a very broad question but we note the risk framework on Page 53 of the draft RIS. We would support continued development of this type of framework which, once agreed, could be tested against real world examples before being implemented.

We are very supportive of the use of codes of practice or guidelines as an effective and efficient way of managing industry behaviours.

19. Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Spirits NZ members responding to this consultation will provide this detail.

20. Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

No.

21. Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

POSITIVE

We support the ongoing development of the "regulatory sandbox" approach.

22. What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Spirits NZ members responding to this consultation will provide this detail but on behalf of Distilled Spirits Aotearoa we mention here the ongoing development of the New Zealand-based spirits industry that is continually looking for novel or new ways to produce traditional spirits (e.g. gin and whisky) such that a "New Zealand Inc" brand is established. This can include, for example, the use of novel botanicals ingredients for gin including a selection of native aromatic plants and seeds. A "sandbox" facility might prove very useful as these products are being developed.

23. Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

POSITIVE

We see this component as being at the core of the Act review.

24. Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Yes.

25. Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

POSITIVE

In general this would be a positive outcome of the Act review. Earlier interaction with FRSC (and, therefore, the definition of the FRSC/FSANZ relationship) would need to be better understood however. Similarly, how international partnerships would be entered into and executed also needs more definition.

26. Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

This question is not possible to answer given the quality, breadth and scope of data is unknown.

27. Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

POSITIVE

We see this component as being at the core of the Act review.

28. What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Changes to governance structures need to take into account the broader changes being mooted across the food sector review. This is broader than just the Act and the operation of the Board to FSANZ.

The key risk is, therefore, that the Act review (and as it impacts this and other options of course) that suggested changes are made in isolation or out of alignment with other changes currently being debated.

29. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

This is a broad question. Option 2 (and likewise Option 3) is an exposition of the entire review focus and, as such, is meant to establish considerable potential benefits – none of which are properly defined other than in terms of "agility", "resilience" and "fit-for-purpose". In this context it is difficult to think of other benefits that would add to this.

In a similar way this also applies to costs – apart from the cost of doing nothing of course.

30. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Spirits NZ members responding to this consultation will provide this detail.

31. Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

As much of FSANZ's work should be funded by government(s). Where cost recovery is deemed necessary then a broadening of how costs are apportioned is supported.

32. What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Small to medium-sized enterprises are particularly sensitive to additional cost and would be negatively impacted should these increase. This is particularly so given the impact of COVID-19 on business.

33. How often do you currently engage with the food regulation system through making applications to change food standards?

Infrequently.

34. What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

As stated in past submissions the most significant barrier lies not with the quality of the FSANZ staff but with the food regulations and empowering legislation they work under. The simplifying of this would greatly reduce barriers to engagement.

35. Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Spirits NZ does not engage on a frequent basis with food regulatory system per se. Our interest in this review is to ensure that the operation of FSANZ as an independent technical standards body is improved such that the food regulatory outcomes enhance and support business.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.3 'Impacts of Option 3: Build on FSANZ's role to reinforce the bi-national nature of the join food standards system' (pages 104 to 120) of the draft Regulatory Impact Statement before answering the questions below.

36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

NEGATIVE

We do not believe FSANZ should have an enforcement function nor do we feel FSANZ taking a larger role on the international stage is either practical or workable across both Australian and New Zealand jurisdictions.

37. Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Spirits NZ members responding to this consultation will provide this detail.

38. Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Although we see the benefit of this function we believe it does not apply equally across Australia and New Zealand. This is because in New Zealand a strong and practiced system for food recalls already exists. We can see the greater applicability from an Australian multi-state and territory context.

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

POSTIVE

In principle anything that works to streamline or remove uncertainty is supported.

40. Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

No.

41. Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

We do not support FSANZ taking on enforcement activities in New Zealand. We see this as unnecessary as a single enforcement agency already exists. Again – we see more applicability for this existing in an Australian context than a New Zealand one.

42. Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

NEGATIVE

See question 41.

43. Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

No – not applicable.

44. Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

NEGATIVE

As stated above we do not see that FSANZ having greater international reach is both practical or workable. New Zealand is well represented internationally through its core agencies.

We do not see how having FSANZ take on a more formal international role would be necessary when Australia and New Zealand regularly agree on joint positions on all manner of food-related or trade matters. Equally we feel it is important that current arrangements are retained allowing both countries their sovereign right to stand apart on some matters.

45. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Not necessarily quantifiable but, as already stated, we believe an understanding should be reached of the impact on the sovereign right of each country to pursue its own views on food-related matters internationally before continuing with this.

46. What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

We do not believe recovery of costs should be applied to this option.

Overarching views on the RIS

47. Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

The draft RIS is comprehensive in its own right but is limited in scope. In particular as the review of the Act continues we ask that the role and status of FRSC be considered more completely. This is made more applicable – and urgent – given the outcome of the COAG review. We believe FRSC is an unnecessary layer of bureaucracy and should be dismantled.

Further we remain concerned that the structure of Ministers' meetings allows for Australian interests to be overrepresented simply because of the voting structure. Again the COAG review suggests a consensus approach should be adopted at such meetings – something which we would support.

Additionally we feel that the draft RIS should expressly state that any regulatory changes must be of least impact to industry as possible – particularly from a cost perspective.

Finally, we wish to emphasise that for FSANZ to operate effectively within a modernised food regulatory system it must be properly resourced. Although this was touched upon in the draft RIS we feel it needs clear identification as a critical issue.

48. Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

It is difficult to assign priority as asked since most of the components described in the draft RIS interact or interlock with others. However for the purposes of completeness we would place components 1, 2 and 4 on an equal footing followed closely by component 6 with components 3 and 5 being of a lesser priority.

Alignment with draft Aspirations for the Food Regulatory System

Please read the draft Regulatory Impact Statement and the draft Aspirations for the Food Regulatory System before answering the questions below.

The FSANZ Act Review is an element of the ambitious plan to reform the Bi-national Food Regulation System, which also consists of three other projects (see the Food Regulation website for further information). These projects are being progressed in parallel to develop a new, best practice regulatory, legislative and operational basis for the system.
As part of the Review of the Food Regulation Agreement project, draft Aspirations for the Food Regulation System have been developed. For this FSANZ Act Review consultation, stakeholders are also being asked to consider how the reform options for the FSANZ Act align with the draft Aspirations for the Food Regulatory System.

49. Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

The draft RIS fairly attempts to reflect the draft Aspirations. However we remain concerned at the order in which the overall review process is being carried out.

In normal circumstance the aspirations would have been socialised and approved before the Act review process was begun. Significant consultation had been entered into on the Act review before the aspirations' consultation had begun.

We also note that at the last Ministers' meeting the draft aspirations were not signed off. How then can the Act review process proceed with any certainty and what impact will the final adoption of aspirations have should the Act review no longer reflect them?

We ask that the review process be put on hold until the aspirations are formally adopted.

50. If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

We would express again our concern to what we refer to as sovereignty matters. A number of elements of the draft RIS seem to have been influenced by the Australian political system with State, Territory and Federal actors. For example areas such as enforcement and international reach are not as applicable in New Zealand as they may be in Australia.

We are also concerned at the weight of representation for Australian interests in the current system and, potentially, in the system being proposed.

New Zealand is a sovereign nation in its own right and New Zealand industry interests should feel their government's views are properly heard unhindered by a structure that may not allow this. We ask that this matter be addressed before the final RIS is developed.

ENDS

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-02 13:18:24**

About you

What is your name?

Name:
Peter May

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
General public

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:

Not applicable- Responding as an individual

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Nil

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Is the cooperative scheme developed and set out in the FRA fit for purpose? What cooperative scheme would be necessary for the Australian Government to exercise any legislative or regulatory power?

Is new New Zealand law required to give effect to a scheme that allows officers of the Australian Government to enforce New Zealand laws?

Should the public sector employment laws of Australia and New Zealand be harmonised to enable the trans-Tasman elements of a cooperative scheme to work.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

No comment

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

No comment

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

In the absence of evidence that the current legislation does not address current food regulation policy no change must be neutral.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

There are no significant risks.

There is a minor risk that some stakeholders will continue to believe that a Commonwealth authority can do what the Commonwealth cannot.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

No

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

It has been argued that the costs associated with making an application are too onerous. The counter to that argument is that the costs associated with superficial examination of food safety risks would be onerous for the community. The status quo achieves a balance, although the question of where the balance point should be is a political question that is contestable.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

No comment

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

I am not a food regulator. However, I note that the resources allocated to the enforcement of food laws will not necessarily be the same as the resources allocated to enforcement of food standards, which is a small part of the former.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Governments have sought in a number of earlier reviews to address this component and have come up with similar, unsatisfactory responses on each occasion as the statements tend to be too broad and leave more questions open than answered.

If there is a new statement it should make it clear that the paramount purpose of food standards is to support the administration of food laws, which are public health and safety laws. Food standards are not made for the purpose of trade, environment or foreign policy.

The objectives would need substantial revision if a policy decision was made to empower FSANZ to do more than develop food standards and cooperate with food regulators.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

FSANZ's objectives should not be expanded to include sustainability.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

No comment

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

This is not the correct framing. Indigenous foods should be safe and suitable if for sale. Food laws do not regulate consumption.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No comment

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ is not a regulator, so the effect of greater use of codes or guidelines will be at best neutral. It might possibly be negative.

In the event that FSANZ is empowered to be a regulator there might be a positive impact for the food industry if greater use is made of codes of practice for performance based standards. It is not clear that there would be a community benefit from that change.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. Such a delegation would remove accountability. The alleged cumbersome character of the ministerial function is overstated.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Issues that are not intended to be regulated through enforcement rather than persuasion.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

No

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The concept of bespoke regulatory sandboxes in which food safety can be experimented with is problematic. Regulators can already use enforcement discretion to allow innovation that they consider safe, although at the risk of reducing confidence in food safety.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

All novel foods. FSANZ already has capacity to prohibit unsafe foods and can use urgency powers if an unsafe product is introduced.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ may not have practical independence to do this well.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

It should be legislated if it is thought a good idea for FSANZ to be funded to perform that function. FSANZ cannot perform functions that are not legislated.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

In theory, there should already be a high level of information sharing among food regulators, and FSANZ. The reality is that governments have not provided resources to regulators, or FSANZ, to enable significant information sharing.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

No comment in the absence of any information about the form or quality of the services.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Streamlining in FSANZ governance would free up significant resources for the basic work of FSANZ.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

None, although some special interests may feel that they have lost a 'seat at the table'.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

No comment

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

No. The development of standards is a public benefit.

The current cost recovery provisions are problematic, but reasonably attach to benefit attributable to applicants.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

No comment

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Not an applicant

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

No comment

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No comment

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

A significant benefit of the current scheme is that FSANZ's work on recalls is solely as a facilitator, usually of an industry sponsored recall.

Recall laws and powers are different in each jurisdiction, and substantially different in New Zealand where a recall can be instituted on quality grounds.

Giving FSANZ power to initiate recalls would make those recalls subject to administrative law and review and could limit the current effectiveness of FSANZ role.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No comment

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

New Zealand has already answered this question. It has not sought to have FSANZ coordinate New Zealand recalls.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

FSANZ commentary on food standards that it has developed is unlikely to improve understanding of the standards and more likely to introduce uncertainty.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

No. FSANZ officers could reasonably exercise Australian regulatory powers without substantial cost. However, they could not easily be empowered to exercise New Zealand powers.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

FSANZ could be given an enforcement role at significant financial cost to the Australian Government and, I think, minimal saving to state and territory governments which would retain their basic food safety regulation functions.

FSANZ would be changed irretrievably from being an independent developer of standards to being a regulator in its own right. The regulatory function would likely overshadow the standards development function.

FSANZ's role in the regulatory system would be made more uncertain by amendments that enabled FSANZ to enforce some food standards, but not others.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

No comment

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The Australian Government would bear the cost of enabling FSANZ to be an 'influence on the international stage' that expresses FSANZ's views--not necessarily those of the national government. How this might work in relation to New Zealand is uncertain.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

There are very limited opportunities for cost recovery in food standards development.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The options assume that FSANZ is essential. That assumption should be contestable.

It might be more appropriate to place the standards development function within an unlegislated or departmental structure, as in the example provided by the review of the building control board or as a unit within the TGA.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

No comment

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Option 1 is compatible with the draft aspirations. The aspirations describe a system that will still rely on food standards as part of a complex package of measures that enable cooperative regulation.

The draft aspirations appear to indicate a shift to a reduced regulatory impact--one that places a higher priority on industry cooperation to achieve public health and safety objectives. Options 2 and 3 might conceivably be consistent with that aspiration, but are not essential. There is no reason to believe that changing FSANZ into a new body, with different functions, would facilitate achievement of the aspirations better than any other option.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

No comment

Upload any supplementary information here. :
No file uploaded

- The food standards development procedures administered under the FSANZ Act are fit for the purpose of providing a common set of standards to be applied through state, territory and national food safety laws
- The procedures provide:
    - a necessary balance between transparency, consultation and accountability
    - opportunity for a wide range of inputs to decision making
    - opportunity for FSANZ to differentiate simple and more complex applications or proposals, although the basic procedural requirements of consultation and transparency apply to all assessments
- Significant deregulatory impact could be achieved by removing existing standards that exist primarily for the purposes of industry protection, such as Standard 2.10.4, or are more suitable for performance based or post-market regulation, such as the novel food standard and the health and nutrition content claims standard
- State and territory laws could support a regulatory sandbox for novel foods and new technologies, subject to the effects of standards such as the novel foods standard. The basic presumption of food acts is that food that is sold is safe and suitable. Standards such as the novel foods standard work to reverse that presumption and unnecessarily restrict innovation
- Revision of the Act is not a high priority, in the absence of a significant change in the policy framework for jurisdictional relationships within the Australian federation, although there is scope to reform the governance of food standards development to achieve greater efficiency and alignment with food regulation policies established by the relevant governments
- The objective of reducing any regulatory impact of food standards could be established under the current legislation if there was a policy framework that supported the use by regulators of voluntary regulatory tools such as codes of practice. The Ministers' Meeting should issue policy guidelines that:
    - give priority to the use of co-regulatory tools such as codes of practice rather than the mandatory provisions of food laws and commit to the use of those tools by state and territory regulators
    - Encourage the use of codes of practice, in preference to standards if regulation is expected to be performance based, such as in the regulation of health and nutrition claims, food safety management in retail and service and in the regulation of novel foods
- There may be merit in establishing a Commonwealth regulator of Chapter 1 and Chapter 2 of the Food Standards Code. This could be FSANZ, but could also be the ACCC or the agriculture or health department, which already have relevant regulatory powers, resources and capacity. A Commonwealth regulator could make consistent use of tools such as guidelines or codes of practice and not be subject to conflicting state and territory priorities.

Contents

Summary of submission

Food regulation in Australia and New Zealand is achieved through complex web of governmental responsibilities. Within Australia the states and territories are primarily responsible for food regulation, while the Australian Government has limited responsibility in relation to import, export and quarantine. States and territories manage issues such as food sustainability through a broad range of environmental and agriculture laws. In New Zealand, the national government has plenary responsibility for all aspects of food regulation and other matters.

Subordinate to the systems of food regulation enforcement a system has been established to develop harmonised food standards. Food standards function to create a better understanding of the regulatory terms 'safe and unsuitable'. They work generally by reducing uncertainty about what is safe or suitable, by establishing an objective standard against which safety or suitability can be assessed[1]. Food standards are not enforceable on their own; they are no more than guideposts to assist the enforcement of food laws. They assist industry by establishing benchmarks for meeting the test of safety and suitability and provide assurance to consumers that the test is satisfied.

Regulators apply standards as one element of their regulatory toolbox, and have access to a wide range of alternatives to direct enforcement of the Food Standards Code's provisions. Variations in the implementation of standards occur because regulators choose to manage risk differently. There is scope for the food regulation agreements to be revised to provide that the cooperating governments will agree to implement a higher level of consistency than under the current agreement. For example, jurisdictions could agree to permit individual states less freedom to deviate from model provisions. Alternatively, a single regulator could be created to replace disaggregated regulators. Between those positions there is a range of options to allocate regulatory responsibilities.

The complexity of the relationships between regulators and the separate role of FSANZ as a standards developer can be a source of uncertainty about roles and responsibilities. In particular, uncertainty about the role of FSANZ is increased when FSANZ acts as if it is a regulator; when it has no regulatory authority, or when governments work in a manner that suggests that FSANZ, rather than the agriculture department, is the relevant food regulator[2].

In both countries food regulation is often described as being subject to a trans-Tasman food regulation system. This description elides the true nature of the intra-governmental responsibilities and cooperative arrangements affecting Australia and New Zealand. The trans-Tasman aspect of cooperation is actually a limited cooperation focussed on, first, development and implementation of some common standards for a limited class of subjects and, second, coordination of regulatory activities and policy development.

[1] Some standards assume that a food, such as a novel food or a food that contains altered genetic material, is inherently unsafe and should not be permitted to be sold unless approved for sale.

[2] Policy makers have previously considered whether FSANZ should be the regulator for import, export and quarantine purposes and the government of the day resolved that question in favour of placing that responsibility under direct ministerial control.

Although unstated, the main policy problem posed by the review is whether a national approach directed by the Australian Government is required to achieve optimal food safety outcomes in Australia. The review invites consideration of a reorganisation of Commonwealth-State responsibilities concerning food regulation. A second policy problem is whether a greater level of cooperation between Australia and New Zealand could provide a public benefit.

This submission recognises that although some minor amendment of the Act could be appropriate—to remove redundant provisions and to modernise the governance of food standards development—major amendment is neither necessary nor appropriate.

At its base, the submission argues that the system is functional as a system for developing harmonised food standards that are applied as a part of the regulatory toolbox of the diverse range of regulators in two countries. While the standards development procedure might appear to be cumbersome the provisions are a response to a widely recognised need for good decision making to be based on transparent and effective consultation. The procedure should be revised only with considerable caution.

If the terms of reference are really asking whether Australia and New Zealand should join together to establish a regulator that will replace some or all of the functions of the current regulators and perform for both nations a range of statehood functions such as trade and foreign policy implementation, the current legislation is an inappropriate starting point. Simple tinkering with the FSANZ Act would be inadequate to establish a body with the broad trans-national remit envisaged by Option 3, and parts of Option 2.

I approach Options 1 and 2 on the assumption that the underlying policy framework is unchanged. That is, states and territories will continue to be responsible for public health and safety. The policy problems identified by the review do not open the broad question of Commonwealth-State allocation of legislative authority. Option 3 will be approached on the basis that the Commonwealth-State policy framework is open for consideration and that the policy problem is how best to regulate food safety and the public health aspects of food consumption in both Australia and New Zealand, without regard to the existing agreements or their implementation. The submission notes a possibility of the Commonwealth taking over responsibility for the labelling, trade description and composition standards in the Code, ie Chapters 1 and 2 of the Code, with an appropriate transfer of functions from the states and territories.

Submission

The review raises some so-called policy problems. Whether those problems exist should be contestable.

For example, it is said as a justification for the review that the Act has been "in place for almost 30 years, with few amendments over that time." This is a misleading analysis of the legislative history. In that time and on more than one occasion, amending legislation has made significant changes to objectives, the functions of FSANZ and the agency's relationship with legislators and policy makers.

It is also asserted, without evidence, that the current review is the first major review in 30 years. Clearly the authors are unaware of the many earlier reviews, such as, for example, the Bansemer review or the major post-implementation review conducted by the National Food Authority and the subsequent work of the Senior Officials Group. Among other things, those reviews emphasised the need for standards development processes that allowed adequate, and real, consultation with a broad range of stakeholders. That focus on transparency and stakeholder engagement seems to be regarded as unnecessary by the review authors. Many of those reviews grappled with the question of the objectives of the cooperative system: with obviously mixed results given the persistence of questions about, or low acceptance of, those objectives.

The original Act was enacted to implement an agreement between the Australian Government and the Australian states and territories. That Act had no mention of New Zealand. The agreement was a consequence of the Australian Government deciding to establish, and fund, a body created under national legislation to facilitate cooperation between the states. That body, the National Food Authority, had a broad remit that was subsequently reduced by legislation in order to rebalance the roles of elected governments and appointed officials respectively. The current review seeks to re-examine that decision.

The Act was amended 5 years later to provide for the new agreement with New Zealand, in which New Zealand agreed to adopt some Australian food standards as part of New Zealand law and to contribute some funds toward the further development of those and similar standards. This legislation made clear the divide between the policy and legislative functions of ministers and the administrative role of FSANZ; particularly in relation to food standards development.

In 2007 the Food Authority was renamed Food Standards Australia New Zealand and given a more limited remit. As the second reading speech made clear, the new name was deliberate: to clearly define the role of FSANZ as an agency responsible for standards development to support independent regulatory systems. The stated purpose of the amendment was to" expedite the development of food regulatory measures (commonly referred to as food standards) by Food Standards Australia New Zealand (the Authority) and improve the framework within which the Authority operates and food standards are made".

In 2010 the Act was amended again to "implement a reform agreed to by the Council of Australian Governments (COAG) on 3 July 2008, that calls for the recognition, for domestically grown produce, by Food Standards Australia New Zealand (hereafter referred to as the Authority), of the Australian

Pesticides and Veterinary Medicines Authority's (APVMA) residue risk assessment and the promulgation of the resulting maximum residue limits (MRLs) in the Australia New Zealand Food Standards Code (the Food Code)." The review paper refers to this power as a basis for FSANZ recognising the assessments of other regulatory bodies. The 2010 amendment demonstrates that the assessments of other bodies can be recognised if the Australian Government legislates to that effect—presumably after consulting states, territories and New Zealand[3] as required by the various agreements. It is not a matter for FSANZ to determine which authorities might be relied on, although its advice might be sought.

As an aside, it should be noted that the recognition of APVMA assessments was granted with a number of safeguards that are not given full credit in the review paper. These include mandatory engagement with FSANZ in the APVMA assessment process and notification to the food ministers' meeting. Acceptance of foreign assessments should, at minimum, have the same transparency and accountability controls.

An argument might be made that there has been no major amendment of the FSANZ Act in the last decade[4]. On that basis alone it might be said that it is timely to review the effectiveness of the legislation. That review should, I suggest, be to determine, first, whether the Act effectively implements the agreements made by governments to set out their policy for food regulation and, secondly, whether the Board has performed effectively and within the scope of its authority. For reasons that are not apparent, the review has commenced by looking at the legislation rather than the underpinning policy. This runs the risk, as happened with the 2007 amendments that included the high level health claims provisions in the Act, of legislating in a hurry and in anticipation of policy that is never developed.

I suggest that the current Act accurately reflects the agreements that governments have made. Accordingly, there is not a strong argument for reform of the Act in the absence of new agreements. This, essentially, is the argument that the system is working and no significant amendment of the Act is necessary—Option 1. There is substantial evidence that the system is working well. Regulators reports that compliance is high and they report the use of a wide range of regulatory tools such as written warnings, improvement notices, penalty notices, prohibition orders, product seizures, recall of products and prosecution.

If the scope of the Board's authority is to develop food regulatory measures it has done that. It can be argued that it has failed to regularly review those standards. For example, it can be said that the Board has not placed sufficient priority on resolution of some proposals, such as the reviews of infant formula[5], nutritive substances and novel foods[6] or gene technology review[7]. It can also be argued that the Board has seen itself as having a remit that goes well beyond the development of food regulatory measures—as it seeks to implement a policy framework that governments have not

[33] It is an oddity of the treaty that New Zealand must be consulted even on matters that New Zealand has excluded from the scope of the treaty.
[4] Although, in that time there was a failed attempt to reduce the size and composition of the FSANZ Board.
[5] P1028 commenced in 2013.
[6] P1024 commenced in 2012.
[77] Work preparatory to the commencement of P1055 started in 2018.

yet agreed to[8]. These are, however, governance issues, and do not require amendment of the Act as much as they demand better ministerial oversight.

Consideration of the draft regulatory impact statement

Policy Problem 1 The Act does not support efficient and effective regulation and is burdensome to administer in its current form

The review sets out four ways in which it is asserted this problem exists. In relation to each there are a number of arguments put forward in support. None are strong. Indeed, there is very little evidence that the Act (or the Food Standards Code) is inadequate to support the existing regulators in their work. A few, isolated examples of national food safety incidents[9] do not provide evidence of inefficient or ineffective regulation, although they possibly indicate scope for enhancement of inter-jurisdictional coordination of incidents that involve more than one jurisdiction.

The objectives are unclear

The case for objectives being unclear is argued in six ways.

First, it is said that the Act does not clearly set out objectives for FSANZ. It is noted that section 3 of the Act. Section 3 sets out the objects of the Act, which are derived from the objects of the FRA and include public health protection. The statement of objects is a reference to the Australian Government's principal source of legislative authority for the FSANZ Act—the intergovernmental arrangements, which have similar objectives and are the foundation of the 'system'.

In the agreements the parties agreed, among many other things, that the Australian Government would establish FSANZ as an independent standards developer[10]. Governments, deliberately, did not give FSANZ the independence from ministerial supervision of bodies such as the UK Food Standards Agency.

It is possible that the conflation of the object of the Act, in section 3, and the matters to which FSANZ should have regard when developing food regulatory measures, in section 18, creates confusion, especially if an attempt is made to read the provisions as having the same purpose. That might be a reason for attempting again the exercise of rewriting the objects and objectives provisions. Past history suggests that the solution is not as simple as the review would have it.

Protecting public health is a broad concept[11]. The ministerial guidance has made it clear that it should be understood broadly. The Act makes it clear that establishing FSANZ is one of ways in which governments have sought to coordinate food regulation across their intersecting jurisdictions and, in that way, contribute to a common understanding of public health. While the FSANZ Act is not quite the autochthonous expedient of the federal judiciary or as complex as the corporations or

[8] The review correctly identifies the misalignment of FSANZ and ministerial objectives.
[9] A national food safety incident is an incident that involves more than one jurisdiction.
[10] The Food Regulation Agreement recites in paragraphs D and E that the ministerial council is established with the functions set out in the agreement and the responsibilities set out in the Act. FSANZ is established to give effect to the Food Regulation Agreement, with the functions set out in the Act.
[11] Protecting public health is not a primary objective of the Food Regulation Agreement. The objective is to 'provide safe food controls for the purpose of protecting public health and safety'. The Act and the Agreement are, therefore, stated to have a common objective.

competition and consumer protections schemes it is nonetheless an expedient—created by the Australian Government as a means for coordinating state and territory action in an area that is substantially within the exclusive competence of the states and territories.

I conclude that section 3 does not require amendment (unless the agreements change to transform the federal arrangements) but that section 18 (and section 30) might be revised to more clearly set out the manner in which FSANZ should assess applications or proposals.

Secondly, the review asks whether trade and economic impacts should be considered by FSANZ when developing food regulatory measures. The review notes that FSANZ is required to implement a policy of achieving common rules for food standards and consistency with international standards. This is a straightforward acknowledgment of orthodox trade policy, which favours common standards as a means of reducing barriers to trade while recognising that trade is a government function. Trade and the economy are matters of national importance that ought not be delegated to a body independent of government.

Third, the review asks whether FSANZ should be required to consider matters such as food sustainability. FSANZ already has power to develop measures in relation to claims made about food. Whether it should have more explicit authority to, in some unspecified way, cut across national, state or territory agriculture or environment policies and regulation might be worth considering. However, it is difficult to understand how such a broad ranging policy change is within the scope of a review of the Act that has the aim of improving FSANZ operating efficiency.

Fourth, the review asks whether the Act should recognise indigenous culture and food expertise. It probably already does, albeit not explicitly. Indigenous foods are food for the purposes of the various food acts. There is a requirement under those acts that if food is sold it must be safe and suitable. There may be scope for food standards to provide greater clarity about issues of safety and suitability of indigenous foods if there is a demand[12]. The Act does not need to be amended to enable the development of food regulatory measures about the safe preparation and sale of indigenous foods.

Fifth, the review suggests that there are inconsistencies in the objectives for developing food regulatory measures set out in section 18 of the Act. The provision could be drafted to avoid any confusion that is created by a statement of the objectives of food regulatory measure development in subsection(1) and the enumeration of the matters to which FSANZ should have regard in subsection(2)—by making it clearer that (2) is subordinate to (1). This provision has proved to be a source of confusion for those who do not give the provision its plain meaning.

Further, there is confusion about how paragraph (b) should be applied. The review suggests that each item should be given the same weight—notwithstanding the impossibility of that proposition. The fact of the matter is that after giving an item consideration—that is, having regard to the matter—the FSANZ Board might decide to give it no weight. That does not preclude the Board from giving weight to another item.

Finally, the review suggests that the role of FSANZ should be clarified by amending the list of FSANZ functions in section 13. There is merit in this suggestion, as greater clarity will assist the Board to

[12] There is a standard for kava.

limit the work of FSANZ to those things that are authorised by its legislation and not invite debate about, for example, the scope of the incidental function or the commercial activities subject to spare capacity provisions in the list of functions. If FSANZ is to be enabled to allocate or divert budgetted funding as capital for commercial activities that power should be explicit and its performance accountable.

Processes are cumbersome and inflexible

The food regulatory development process is actually quite simple and flexible. It can be scaled according to the complexity of the issue. At the simplest level there is a minimal consultation, the content of which is entirely within FSANZ control. It is true that section 33 of the Act prescribes broadly the matters that must be addressed in an assessment. However, the provision does not prescribe the content of the assessment. It is also true that all applications go through a preliminary assessment process. This is a purely administrative process and seems unavoidable if transparency and accountability are to be given any regard as important policies for administrative decision making.

There may be merit in considering an amendment to provide a process for considering new information about an application in a way that is transparent to all stakeholders. However transparency and accountability should not be sacrificed for expediency.

The current Act might seem cumbersome, but the alternative will do injustice to stakeholders who might be blindsided by a non-transparent process. It is a regular complaint, from both industry and community base stakeholders, that FSANZ processes lack sufficient transparency.

The review suggests some other regulatory schemes as relevant to best practice for food regulation.

- The first example is poor. The APVMA can amend Schedule 20, but only after complying with the provisions of the FSANZ Act and the Agvet Code Act in relation to notification and assessment. All the legislation does in reality is remove an apparent requirement in the earlier legislation for the two agencies to act independently of each other. The FRA refers specifically to the limited role of the APVMA.
- The second example is interesting although of limited relevance because the building and construction industry is regulated in a very different way. That said, the model of regulation in that sector might provide an example to follow in some reform of multi-jurisdictional food regulation.

  The ABCB is not a statutory regulator. It is established by an intergovernmental agreement to develop minimum building standards that are called up by state and territory legislation. Its consultation processes are just as cumbersome as FSANZ's are alleged to be, although the ABCB does appear to be able to be far more agile than FSANZ in providing very short consultation periods in appropriate cases. That is perhaps an indication of the relative sophistication of the stakeholders in the relevant sectors. The standards developed by the ABCB are explicitly minimum standards to support complex building and construction laws in each state and territory. They are applied in a system that is designed to ensure performance compliance by builders with those minimum standards.

The Code is described as a performance based code and compliance is a condition of accreditation. The Code gives rise to criminal penalties only if provisions are recognised by state or territory ministers. Whether this type of system should or could be applied to food regulation is beyond the scope of the current review, although Option 3 takes us some way into that territory.[13]

The ABCB governance model should be examined for its possible application to food regulation. The ABCB model relies on a board that has jurisdictional and industry membership and is supported by an element housed within the Industry Department. That model benefits by bringing together representatives of each state and territory administration and relevant industry (and theoretically, community) representatives. It provides a means for policy perspectives to be considered in the standards development process in a way that they are not in the current food regulation system. Of course, the ABCB model has a governing body of considerable size (18).

- The third example, Standards New Zealand, is unhelpful. This is a body that was until relatively recently constituted outside government. It helps to develop and distribute standards but has no role in enforcing, regulating, or certifying compliance with those standards.

The review has expressed concern about the prescriptive approval provisions of the Act[14] without appearing to understand why the provisions exist. A perusal of the legislative history will make it clear that it has previously been considered important that there be an independent and broadly constituted board that is making food regulatory measure approval decisions. Ministers rely on the broad based expertise of the Board as a source of confidence when transforming approval decisions into legislative instruments.

It is true that some decisions could be made at a lower level, but it is difficult to identify a useful demarcation given the small number of decisions made each year and the essential role of ministers (or their delegates) in the legislative process. The history of approvals and requests for review by ministers provides no clear basis for change or any real benefit in change. The fact of the matter is that decision making on food regulatory measures—the primary function of the Board—takes up very little of its time. Simple approvals often occur in short telephone meetings at which the only mild inconvenience is the scheduling of a common time across a 4 hour time span. There is no real complexity in getting board members to meet to perform their most important function and no requirement for the signatures that are relied on by the review as evidence of a burden. It might be asked, if board members are not needed for some (probably most) decisions, why are they needed at all?

The review quite accurately describes the absence of need for the high level health claims provisions. The provisions have not been used simply because they are redundant rather than any

[13] It should be noted that Chapter 3 food standards are, for the greater part, performance standards.

[14] The review says, 'The Act is also prescriptive about decision-making duties within FSANZ, with sign-off of regulatory measures listed as a non-delegable duty for the FSANZ Board, which can add an additional complexity to get signatures for all Board members.

complexity. Although beyond the scope of this review, perhaps the whole concept of high level health claims—essentially a therapeutic claim for food—should be abandoned.

The full range of regulatory measures is not being used

As noted by the review FSANZ has authority to develop food regulatory measures. It can develop measures in two forms—a standard or a code of practice. A code of practice, in this schema, is a standard that cannot be enforced. For all intents, a code of practice is made in precisely the same manner as a standard. The only substantive process variation is that ministers are not involved in approval—because the code of practice does not become part of state or territory law. Importantly, codes of practice are not a part of the Australia New Zealand Food Standards Code.

FSANZ has made some codes of practice, for example, the Code of Practice on Nutritional Content that has subsequently been revised as a standard in Standard 1.2.7. Codes of practice might be more appropriate in performance based regulation such as workers compensation or building construction but are less useful in public health regulation of subjects such as therapeutics or food safety. It might be quite appropriate to use a code of practice for a subject like food packaging materials where support for enforcement might not be as important. I note that at present the Code only touches lightly on the issue of food packaging, to deal with a safety question. That is as it should be.

The unfortunate reality is that codes of practice are not used in food regulation because there has been no community or political appetite for soft regulation of food, especially at the state and territory level. Codes might actually be useful for regulating issues such as microbiological limits or maximum residue limits, where there is no bright line between safe and unsafe. Similarly, a code of practice might be more appropriate for:

- health claims, but for the political, ie ministerial, imperative to provide something capable of enforcement, or
- novel foods, where the existing standard acts as an inhibition on innovation and might be replaced by a code of practice and post-market regulation.

FSANZ can also issue guidelines to assist in interpretation of the Code. However, there are good reasons not to. This is not because guidelines are a bad idea. They work well when issued by a regulator. The first reason is that the Code should be so simple that it requires no further explanation. It is a basic rule of statutory interpretation that extrinsic materials, of which guidelines are an example, should not be relied on unless the primary instrument lacks clarity. FSANZ's role is to produce clear standards: not to explain how they might be read down by the regulated or regulators. The second, related problem is that guidelines can expand the scope for misinterpretation by opening up alternate interpretations. It has not been unknown for officers in FSANZ to have an opinion about a standard that is inconsistent with the standard's plain words or the explanatory memorandum that is published with the approved standard. The primary motivation for the revision of the Food Standards Code in the last decade was a court decision in which it had been held that the handbook style of the Food Standards Code meant that it could not support the criminal sanctions envisaged in the regulatory laws enacted by state and territory legislatures.

Policy makers should determine whether they want a system that is enforceable (a compliance system) or one that is performance based. A compliance base system provides an assurance of

safety and suitability, whereas a performance based system provides an aspiration of safety and suitability.

All that FSANZ is asked to do by its legislation is to develop two nominated types of food regulatory measure—standards and codes of practice[15]. In a sense, this gives FSANZ the possibility of supporting compliance or performance. However, the system that has been established has provided no opportunity for implementation of performance based regulation as FSANZ is not empowered or funded to regulate and food regulators have shown no enthusiasm to enforce codes of practice. A full range of regulatory responses should be vested in food regulators—of which FSANZ, notably, is not one. It is food regulators that should issue guidelines and monitor compliance with them. The issue of guidelines by FSANZ might be symbolic, but does not commit regulators to action. Food regulators currently have appropriate powers to implement performance based regulation if they choose to do so.

There is a mechanism to achieve cooperation at this level of regulation and FSANZ is a part of that mechanism with the regulators. That mechanism is ISFR. ISFR should be given the resources to function as intended and to do that job effectively. It cannot do so with just one project officer. Giving the ISFR function to FSANZ would turn the clock back 30 years—when the NFA had secretariat functions—something that I understand the review seeks to avoid.

Elements of FSANZ operations are inefficient

The review suggests that the Board is representative *in nature*—whatever that means. In any event, the statement is incorrect—although it might, unfortunately, be correct as a statement of the *de facto* situation. The Board is designed to have participation from a range of disciplines to ensure that it can perform its primary function of developing food standards. That participation comes from the public health, consumer protection and advocacy and industry sectors. Board members do not represent the interests of their appointers and would act unlawfully if they performed their function that way by acting as advocates for a particular constituency rather than as directors of an accountable authority.

The need for broad based input into standards development is in conflict with a need for an agile Board to administer FSANZ as an agency of the Australian Government. Modern boards are not top-heavy, as the FSANZ Board is.

It would be an improvement for the CEO to be the accountable authority[16] for FSANZ and for a board's role to be limited to overseeing the development of and approving food standards; and, perhaps, providing advice to the CEO in relation to other FSANZ functions. The advisory board should be independent of the CEO and the CEO should not be a member.

A governance structure that included an advisory board would avoid the conflict between the fiduciary responsibilities of directors of a PGPA authority and the reality that those appointees expect to, and are expected to, advocate for special interests.

[15] A code of practice is nothing more or less than a standard that is not intended to be enforced by legislation.
[16] See the PGPA Act

The review then suggests that technology could be harnessed to improve processes. While that might be so, the Act does not need amendment to achieve the outcome. Indeed, legislating a technological process would probably be counterproductive.

Finally, the review suggests that cost recovery should be expanded and suggests that TGA and APVMA provide good examples. They are, in reality, poor examples as both approve products on a case by case basis—and both are regulators. They recover costs for the work involved in approving individual products, not for developing standards.

By contrast, FSANZ develops standards that are applicable to all foods and does not approve products on a product by product basis. It would be counterproductive for innovators of a class of products or of processes to have to pay for benefits, ie the development of a new standard, which others could rely on as a free good. Equally, it would be counterproductive to deny industry the benefit of a general standard.

Other forms of regulation protect the property interests of innovators. FSANZ is a standards developer: not an intellectual property regulator, and ought not be.

Policy Problem 2 Legislation does not enable a strong, resilient and agile food regulation system

While the review has identified three themes to make out this case, it should not be forgotten that the legislation is no more than an enactment of the agreements that governments have reached about the processes for developing food standards to support their food regulatory activities in a cooperative environment.

The arrangements agreed by the Australian governments (and substantially adopted in the Australia New Zealand agreement) provide a flexible system for developing food standards. A standard can be developed in response to an application or FSANZ can raise a proposal in relation to any matter that can be the subject of a standard.

The review, correctly, identifies resourcing and resource allocation as having an impact on the capacity of FSANZ to address its workload quicker. That should be the subject of a resources review, rather than a review of the Act.

Most applications are dealt with in the time specified as a reasonable time for completion. If an application cannot be completed within the nominated period the only consequence is that the matter must be reported. Reporting allows government to consider the resourcing issue. On the other hand, failure to report obscures the reasons for not meeting performance expectations.

The funding arrangements are relatively unique. FSANZ is not funded under the usual COAG arrangements, with states and territories contributing along with the Australian Government. That was an overt decision of the participating governments: that the Australian Government would provide a central body to develop standards and the states and territories would implement those standards within their regulatory systems. Any consideration of a proposal to change the operations of FSANZ should include a review of that funding commitment.

New Zealand has agreed to contribute a proportion of the cost of developing the standards that it has decided to implement in its regulatory system—and no more. The New Zealand contribution is linked to the Australian Government's assessment of the resource needs for FSANZ and an estimate of the amount of FSANZ's work that relates to the relevant standards in the FSANZ work plan. The formula makes no provision for the disproportionate cost of New Zealand based directors or the cost of maintaining locally engaged staff and an office in Wellington. The cost sharing agreement is outside the scope of the current review.

The review's suggestion that applications have a small number of beneficiaries displays a perverse misunderstanding of food regulation. The beneficiaries of food regulation are consumers and standards that provide little or no community benefit need not be made. It is precisely because the links between developing food standards and community benefit are so long and opaque that cost recovery is impractical for almost all applications. On the other hand, those few applications that do have a direct benefit exclusively for an applicant are subject to mandatory cost recovery.

Finally, the review suggests that changes in the workload of FSANZ create inefficiencies. Whether that is true depends on perspective. FSANZ officers appear to have suggested that a lack of resources limits FSANZ capacity to undertake proposals. In another context, industry has argued that FSANZ should focus on applications and undertake proposals only when applications demand is low. The answer probably lies between these two positions—but is a matter for a review of FSANZ operations rather than a review of the Act. The Act, incidentally, clearly establishes the priorities of governments—that applications, especially paid applications, have priority over proposals.

Beyond any question of the priority to be given between applications and proposals is a question about the priority that FSANZ gives to other activities and the impact that taking on peripheral activities has on resource availability for standards development.

The argument that applications inhibit FSANZ capacity to undertake other functions relies on an inherent assumption that the other functions are as important as standards development commenced by applications, rather than being incidental. Nothing in the history of FSANZ supports that conclusion.

Food safety and quality no longer guarantee a competitive advantage for Australian and New Zealand food businesses

The object of the Act is to protect public health and safety, not to provide a competitive advantage to industry. It would be incompatible with FSANZ role as a participant in a public health system for it to have an economic regulation function.

There is limited collaboration and integration of effort across the regulatory system

The review's discussion appears to suggest that FSANZ is so independent of political oversight that it has developed a vision of system priorities that is not aligned with political direction. This is presented as a beneficial outcome and it appears to be suggested that the answer is for the policy decision makers to fall in line. This is remarkable public policy.

The review then discusses the possibility that the system would benefit by having within it a central clearing house for information about food safety and food composition. It provides examples of this being done in three jurisdictions through collaboration between industry, academia and regulators

and then, implicitly, suggests that FSANZ should fill the role in Australia[17]. It is probably correct that the current list of functions would need modification to enable FSANZ to have an explicit information gathering and management function. However, a deeper investigation is needed to determine whether FSANZ would be the best repository for that function. The review just seems to assume it is axiomatic that FSANZ is best placed to do this work; without any consideration of alternatives, even those suggested by the examples given.

Policy Problem 3 Current arrangements undermine the power of a single, joint food standards system

The review's argument in relation to this issue appears to be that governments have not decided to expand their use of FSANZ as a standard setter to manage other elements of their food regulation activity.

In each jurisdiction food safety recalls are managed under local, ie state, territory or New Zealand, laws. In theory, FSANZ officers (at least those in Australia[18]) could be delegated authority to act under the relevant state and territory laws. However, delegation would be unnecessarily complex and lead to undesirable accountability uncertainty.

The fact of the matter is that FSANZ's role in food safety recalls is almost always to coordinate a recall that has been initiated by a supplier following discussion with a regulator. The recall occurs voluntarily without the application of formal regulatory processes. FSANZ has no regulatory powers and none have been needed for it to perform a coordinating role effectively and efficiently. FSANZ's role in relation to food recalls is a best case example of light touch regulation. The regulatory authority sits with state and territory governments and FSANZ operates independently of the relevant laws but in cooperation with both regulators and industry sponsors.

There is, perhaps, a good argument for the states and territories to contribute to the cost of the recall function in order to ensure that the function, which is demand driven, remains adequately resourced.

The case study provided, while interesting, is not a good one. Food tampering is a police issue and the incident was handled by police at a jurisdictional level. Food recalls were managed by FSANZ quickly and effectively using the authority provided by the Act to work with relevant states and territories.

The Food Regulation Agreements have the objective of reducing cross-jurisdictional differences in food regulation. However, at their heart is a recognition that food regulation is a state or territory (in New Zealand, national) jurisdictional responsibility. The agreements make specific provision for differences and for resolution of differences.

[17] Presumably not in New Zealand, where a collaboration already exists.

[18] New Zealand poses more complex problems because FSANZ employees in New Zealand are locally engaged staff and are not subject to the range of employment controls that apply to FSANZ employees under the Public Service Act. Furthermore, the law relating to recalls in New Zealand is quite unlike the laws of Australian states and territories. At present, FSANZ cannot perform the function for New Zealand simply because New Zealand has not asked it to.

It is, for example, implicit in the system that governments will decide individually how they resource food regulation and which industry will be given greater priority—as between all industries and as to the other priorities of government. For most state and territory governments food regulation is a minor public health function that can have economic impacts. In some jurisdictions the function sits within the health department while in others it is in agriculture or economic development departments.

The agreements do not have the removal of all differences as an objective. That there are disagreements at the jurisdictional level about regulatory policy and priorities is perhaps an indictment of the extent of jurisdictional commitment to consistency, but it does not provide reason to amend the Act in the absence of agreement by the states and territories to refer powers to the Australian Government.

The food regulation agreements recite the role of the Australian Government in funding a single standards development authority. They say nothing about funding a central government agency to take over state and territory regulatory policy or to direct state and territory regulatory priorities.

Perhaps, and this might be where the review was heading, there is merit in reviewing the model food acts and to provide less scope for states and territories (and New Zealand) to exercise the sovereignty that they clearly have. The current review does not pursue that complex option.

The review's diversion into a discussion about 'reg-tech' is interesting but irrelevant to consideration of modernisation of the Act. The appropriate place to implement 'reg-tech' would be in standards: if a case could be made that the costs of 'reg tech' are less than the benefits. In relation to traceability, the current requirement of one step forward and one back may be all that is necessary and all that can be applied to all but niche food types without placing a disproportionate burden on industry.

It is true that the food-medicine interface presents difficult problems. However, anyone who really thinks the food medicine interface is difficult to navigate will not want to read the Income Tax Assessment Act. Most issues are resolved by determining a product to be a therapeutic. The fact that commentators keep falling back on the singularity of Gummy Bears suggests that the problem, while complex, is not in practice all that much of a problem. There have been many reviews of this issue over the past three decades. It is an intractable issue—and might have to remain that way. The likelihood is that any attempt to address perceived problems legislatively will only add to complexity; creating problems that are not known now.

Oddly, the review speculates that FSANZ should have a role developing foreign policy: not just in Australia but also in New Zealand. This thought should remain idle speculation.

Rationale for government action

The review says that:

> "Feedback on the earlier scoping paper almost universally acknowledged that:
>
> - There is an ongoing rationale for regulating food through an independent standard-setting body

- There is a need for government action to modernise the Act to address issues relating to increasing regulatory inefficiency and declining effectiveness of the regulatory framework."

That might be overstating things. There is an ongoing rationale for regulating food. Also there is a value within a cooperative system for having an independent standards setter. There is also a need for governments to address regulatory inefficiency.

The review's suggestion that 'there are several limitations to the Act in its current form which hinder efficient and effective regulation, and government action is now required to effectively respond to them' has not been made out. Indeed, if efficient regulation is hard to achieve it is a problem inherent in the structure of jurisdictional food acts and the federal compact. Any inefficiency in trans-Tasman matters is a consequence of the trans-Tasman Agreement. Changing FSANZ only alters the tools in the regulatory toolbox—noting that the toolbox is a lot bigger than FSANZ.

Consideration of RIS options

There is an option to repeal the Act. That option is unrealistic, although not for the reasons suggested by the review which appears to see the issues only through an Australia-New Zealand lens. FSANZ was brought into being as a successor to the range of mechanisms adopted by the states and territories, with Australian Government support, to develop common food standards[19]. Nothing suggests that the benefit of a level of cooperation to develop harmonised food standards has ceased to exist.

Similarly, the option to do nothing[20] is unrealistic as there is, at minimum, a need for some legislative housekeeping to remove, for example, the high level health claims provisions.

Of the matters discussed in Section 5.2 of the review (Option 2) I would support only Component 6.

There is no need to rehearse the earlier discussions about system and food standards objectives. These have been reviewed many times. All that is necessary is to read the legislation carefully and to accept its plain words as meaning what they say.

The functions of FSANZ are delimited by the agreements and are quite clear in the Act. The Act ought not be amended to legitimise scope creep.

An expanded use of other regulatory tools by FSANZ, such as guidelines and codes of practice, might be more appropriate if FSANZ was a regulator. It is not. While FSANZ is not a regulator the use of such tools is a vanity project, which runs the risk of reducing rather than enhancing the understanding of standards. FSANZ's role is to develop clear and concise standards. Issuing explanatory or interpretative materials is an acknowledgment that it is incapable of performing that role.

If there is a genuine desire for a greater use of codes of practice, they should be developed through tightly coordinated FRSC/ISFR/FSANZ processes in order to ensure consistency with jurisdictional

[19] That history demonstrates that a statutory agency such as FSANZ is not essential to achieve harmonised standards. The standards development functions of FSANZ might well be better performed by a non-statutory body structured along the lines of the ABCB.
[20] Option 1

regulatory policy and to ensure that regulators have capacity to implement the codes. State and territory regulators, FRSC and ISFR may need additional resources to participate effectively.

While I do not share the review's apparent conclusion that the current system is not risk based, I do agree that there might be limited scope for dealing with more matters under the minor procedure—if it is understood that the rights of producers and consumers will be altered without consultation of that procedure is used. As an example, it is possible that the minimal check pathway[21] described by the review could be incorporated in the list of matters that can be done under the minor procedure.

Nothing could reduce confidence in the Code more than avoiding the requirement that the Board approve standards and variations. That is really their sole purpose and the board provides no value if it does not perform this function. The CEO has no mandatory qualifications that give him or her a desired expertise in matters of food composition and safety, dietary impact, consumer protection, public health and business.

There is nothing stopping ministers performing the legislative function of the Minister's Meeting through delegation. The role of ministers is not, as the review puts it, the ministers having a 'final say'. The ministers are performing a critical legislative function that the unelected officials of FSANZ (whether on the Board or the staff) cannot lawfully perform[22]. For this reason, the role of ministers should not be circumscribed to ease FSANZ workload. That change would reduce or eliminate delays between FSANZ approval and consideration by ministers, but that delay could equally be reduced by streamlining the ministerial engagement process.

The discussion about accepting the assessments of other assessment bodies needs deeper thought and discussion. Superficially, the idea has merit and simplicity. On the limited information provided in the discussion it is hard to determine what exactly is proposed or how it would advance anything as FSANZ can already consider international assessments without repeating work done elsewhere.

There seems to be an assumption that the legislation, presumably regulations, should name international bodies whose determinations would be accepted without further examination. That would be a substantial shift from the current legislative requirement, which does not require a full re-examination of the data that led to the international determination, but does require a consideration of the impact of that data in domestic community consumption. It cannot be assumed that approval by one or two isolated international regulators is a complete substitute for a local independent assessment. Such legislation might have an unintended consequence of committing our system to accepting approvals that might not be agreed to after local consideration. There are many examples of Codex approvals that FSANZ officials do not agree with.

The review says**, '**FSANZ could undertake an annual harmonisation process, when deemed appropriate, to adopt new standards into the Food Standard Code.' It could, just as it already does[23].

[21] Review, 58

[22] Theoretically, ministers could delegate their authority to the FSANZ Board, but that would defeat any concept of independence of the Board.
If FSANZ officers were given authority to approve standards or variations, their decisions would be reviewable decisions. The decisions of the ministers are not reviewable because their decisions are legislative decisions and not administrative decisions. Reviewability would introduce an entirely avoidable complexity and uncertainty into the standards development process.

[23] And, the Ministers Meeting could approve the outcome annually, as occurs under the current procedures.

For example, code maintenance proposals routinely update the references to internationally developed standards for food additives, chemical composition and analytical methods. No amendment of the Act is required, unless there is a desire to remove a public consultation requirement. Code maintenance can be conducted on any schedule determined by FSANZ.

The discussion about minimal check pathways suggests that the review does not understand how assessments are done. FSANZ already determines how it assesses an application. That is not a prescribed process. All that is prescribed is the subject content of an assessment report—to provide accountability. That might conceivably be simplified; albeit at the cost of transparency and accountability.

The suggestion that ministers can be removed from the legislative process is problematic. Ministers are performing the important function of determining state or territory law, including the criminal law[24]. Their engagement assures state and territory governments that their interests have been considered and that subordinate legislation that they have agreed to implement can actually be implemented. They are performing a legislative function. That is a function that could not be delegated by an Australian Government law to Australian Government officials[25].

Governments could agree to adopt a less intrusive regulation of so-called 'lower risk' matters such as food additives. Of course, not everyone regards food additives as low risk. The risks (to people and to the system's integrity) can be mitigated, and are, through adoption of foreign system assessments in regular proposals.

Under the current constitutional allocation of legislative powers any proposal to allow industry self-substantiation of food additives would require amendment of the food acts[26]. Amendment of the FSANZ Act would not impact state or territory laws.

The suggestion for regulatory sandboxes might have some merit as a replacement for the novel foods standard, in order to facilitate innovation, although the regulatory sandbox can only be administered by a regulator. The problem with the current novel foods standard operation is the standard itself. It is beyond the scope of the current review to examine how novel foods might be regulated in a way that fosters greater innovation, but a good starting point might be to abandon the notion that novel foods are inherently unsafe. The current review also does not provide scope for examining how FSANZ might have a role in a system that allows exemptions to state and territory law. The issues are far more complex than the current review discussion suggests[27].

FSANZ currently has power to perform a range of information collection and management and food safety education functions in cooperation with states and territories (and New Zealand, if it asks and is prepared to pay for the service)[28] or to perform some of those functions on its own. However, why FSANZ should have a power to act independently of regulators in an area that is essentially their

[24] Failure to comply with a Code requirement is a criminal offence under state and territory law

[25] State, territory or New Zealand law could conceivably authorise this outcome. Alternatively, the existence of standards that cannot be enforced through criminal law might be an acceptable policy outcome.

[26] FSANZ has suggested in P1024 that it can make a standard that authorises self-substantiation. It is arguable that such a provision would not be a standard capable of being made under FSANZ Act section 16, as self-substantiation introduces an element of subjectivity that is inconsistent with the concept of standardisation.

[27] P1024, now in its ninth year, provides evidence of the complexity of the issues.

[28] FSANZ Act para13(1)(h)

responsibility is difficult to understand. Section 16 of the Act appears to have been drafted with a keen appreciation of the respective roles and responsibilities of regulators, on the one hand, and FSANZ, on the other. The section allows FSANZ to work on its own initiative when that work will not be in conflict with the work of state and territory authorities exercising regulatory discretion. The section is recognition that FSANZ has not been created as a regulatory supervisor.

Component 5 of the review discussion seems to envisage a tail wagging dog relationship with the Ministers Meeting and FRSC. The sort of regular discussion with both bodies that is discussed by the review is already possible under the work plan provisions of the Act and the FRSC operating procedures. The Act does not need to be amended to achieve what is currently possible, including ministers and FRSC making greater use of FSANZ capacity—if that capacity is available. Ministers, and to some extent FRSC, have acted as if FSANZ can be directed to undertake complex tasks at will and without regard to its capacity or resources. Discussion around a work plan should include a discussion about supplementary resourcing of FSANZ to allow it to undertake new tasks, while undertaking its core responsibilities within the core Australian Government funding.

Component 6 could produce value by freeing up resources currently allocated to a Board that is larger than necessary. FSANZ has <110 staff but 10 board members. Those 10 board members meet face to face for a total of less than 8 days each year and by telephone a few hours more. But, they cost the organisation almost 10% its annual resourcing.

There is no strong argument for a large board to govern an organisation that has less than 110 staff and limited functions. The current justification for the Board's existence is that a broad range of experience is needed to approve food standards that can provide confidence to the regulators, industry and consumers. An advisory board, with appropriate safeguards to ensure that advice is not wilfully ignored, could provide that confidence—and mitigate any risk that the board's work is unaligned with the strategic objectives of ministers (the system owners).

Cost recovery is only appropriate where the payer receives a unique benefit. The Act provides for two circumstances, exclusive economic benefit or expedition. All other cases provide a public benefit and should be funded by the public purse. I put aside the question of how jurisdictions should contribute to system costs.

A third option is replace the FSANZ Act with legislation to implement a different set of political agreements, in which ministers have agreed that the Australian Government will be responsible for some domestic food regulation[29] and perhaps also for the public health aspects of food consumption in one or both countries. This option envisages a far-reaching and complex reorganisation of federal and international arrangements that is not adequately considered by the review.

Are there options to reposition FSANZ in the Australian and New Zealand systems without amending legislation?

The policy problems identified by the review assume that the Act is the source of inefficiency in the regulation of food in Australia and New Zealand. I suggest that, given that the Act is a faithful

[29] I discuss below an option for the Australian Government to establish a regulator for the purposes of Chapters 1 and 2 of the Food Standards Code.

statement of the policy underpinning the establishment of FSANZ, we should look elsewhere to examine why the system does not operate as expected.

The review appears to have approached its task on the assumption that the cooperative system has the objective of harmonised implementation of food laws. While jurisdictions have common high level objectives of ensuring public health and safety and have agreed that harmonised laws are desirable the cooperative arrangements recognise that jurisdictions will act differently, having regard to local (rather than national) priorities.

The outcome is that FSANZ develops food regulatory measures in an environment that is overtly risk averse and places a priority on the development of standards rather than other regulatory tools. While ministerial rhetoric has consistently supported minimal regulation during at least the past 30 years, the practice of ministers has been consistently risk averse. A ministerial guideline that starts by directing FSANZ to develop a standard does not provide scope for the use of less regulatory tools[30]. If there is a desire for the food regulatory systems of Australia and New Zealand to use less regulatory tools the policy framework should promote the use of those tools by regulators. It might be overly optimistic to suggest that FSANZ should issue unenforceable guidelines or codes in the hope that regulators will give them regard, or have capacity to implement them.

While it is beyond the scope of this submission to detail how the policy framework should be changed I suggest that ministers could consider:

- Issuing policy guidelines that include a risk analysis that indicates to FSANZ that regulators should apply less regulatory tools, such as guidelines or codes, to a particular issue
- Not issuing guidelines that mandate the development of a standard unless ministers are satisfied that the issue requires a high level of regulation
- Asserting responsibility, and accountability, for political risk. FSANZ's role should be to assess scientific risk.

Is there a way for the Australian Government to establish a food regulator?

It might be possible for the Australian Government to legislate to establish a national regulator. But, the Australian Government's authority to make laws for food regulation are extremely limited in the absence of action by the states to empower the national government.

It is conceivable that such legislation could be founded on the trade and commerce and corporations powers or the referral of relevant powers by the states[31]. In the absence of referral a national law might not be effective to reach small business and sole traders, with the possibility of a gap in coverage. Another alternative might be to establish a complex of laws similar to those for corporations and for competition and consumer protection. Or, the model food acts could be modified to achieve that purpose.

[30] Eg Novel foods Guideline, cl1

[31] The Legislation Handbook requires policy makers to consult the Attorney-General's Department on proposals for cooperative schemes.

It is beyond the scope of this submission to delve further into this option, which could take many years to develop and implement. However, a referral might be the best approach if states are prepared to give up some responsibility, eg to refer powers in relation to Chapters 1 and 2 while retaining responsibility for enforcement of Chapters 3 and 4 of the Code.

If that question can be resolved there is a further question about the identity of the regulator. The review assumes, without discussion, that FSANZ would be the food regulator in a revised scheme. That need not be so. The ACCC would be well placed to take on the role and the role could also be performed with the existing regulatory functions of the health or agriculture departments.

SUBMISSION: Public Consultation Review of the Food Standards Australia New Zealand Act 1991-draft Regulatory Impact Statement

Maxine Prentice
[redacted]

I have five grandchildren whose ages range from fifteen to twenty five years.

Fortunately all their parents are enlightened enough so that sugary drinks and confectionary have always been special occasion treats only for them. As young adults all of them choose to drink water rather than the vast range of soft drinks readily available. They have established good health habits. However, as well as the obvious choices, consumers are largely unaware that the current labelling conceals the hidden dangers of sugar content in most manufactured food and drink products.

The overtly sugar based goods such as soft drinks and candy bars are a problem. However, in purchasing such items as these, it is obviously a person's choice to consume a concentrated amount of sugar. Education on the impacts of sugar on health is a positive step but a more direct means of demonstrating sugar content is urgently required at the point of purchase. I believe that the teaspoon symbol would be effective. With a teaspoon for every 4grams of sugar in the product clearly illustrated on the label a person is alerted to the amount of sugar they would be taking. Once attention is drawn it would be potentially quite sobering and could lead these consumers to make different future choices.

As a personal example I used to drink tonic water as a mixer but usually just as a refreshing drink. Idly one day it was pointed out to me that there was the equivalent of 6 teaspoons of sugar in the 300ml bottle. I could not believe it as I had never equated tonic water with heavy sugar content. Once enlightened, it was a simple matter to replace it with sugar free soda water but in ignorance of the sugar facts I could well have continued to drink tonic water to the detriment of my health. Before writing this I decided to check out the label on a bottle of Schweppes tonic water in the store. In tiny print on the neck of the bottle, the sugar content was so obscure that I had to purchase a bottle so I could examine it at home with a magnifying glass. THIS IS THE PROBLEM. The addition of sugar seems to me the deliberate act of obscuring information in labelling. Again, the 6 teaspoons on that bottle clearly displayed would ensure that there was an informed choice about effects on health of that product.

Whilst consumers of overtly sugar based food and drinks would be well served by a clear message about sugar content in the product they are purchasing (there would be a lot of teaspoons on the label) a major problem is the covert introduction of sugar into almost every manufactured food product. That must be addressed. In busy urban lives, processed food is a prominent part of the kitchen food supply and sugar content in processed foods is a hidden health hazard that impacts every consumer – including those that eschew sugary drinks for water.

This matter is now urgent. The national and personal cost of undetected sugar consumption cannot be sustained. Education is significant but nothing is more effective than easy access to information on sugar content for everyone by a single unequivocal symbol that shows in the number of teaspoons clearly illustrated on the label, the amount of sugar in the product they are about to purchase or consume.

I cannot see a better, simpler and more effective way of doing this than by the symbol of a teaspoon.

A teaspoon is:
*a readily recognised object
*a recognised unit of measure
*a diverse cultural symbol
*an easily replicated object
*a simple sculptural outline
*a compact image that all products can carry.

IT IS TIME A PROSPEROUS 21st CENTURY AUSTRALIA LOOKED HONESTLY AT WHAT IT WANTS FOR ITS NATION'S HEALTH AND THE WELL BEING OF ITS PEOPLE. THIS IS ESPECIALLY SIGNIFICANT FOR ITS YOUTH WHO NEED THE BEST INFORMATION POSSIBLE IN KNOWING WHAT THEY ARE CHOSING TO EAT. THEY ARE INCREASINGLY DEMANDING TO KNOW THE JOURNEY FROM PADDOCK TO PLATE: IT IS LONG OVERDUE THAT THE JOURNEY THROUGH THE MANUFACTURING PROCESS TO THE END PRODUCT IS COMPLETELY TRANSPARENT. SUGAR IS AN INSIDIOUS AND OFTEN UNPREDICTED ADDITIVE THAT MUST BE EXPOSED.

THROUGH THE SIMPLE AND EFFECTIVE ILLUSTRATION ON EVERY PACKAGE AND PRODUCT THE NUMBER OF TEASPOONS WILL INDICATE THE AMOUNT OF SUGAR IT CONTAINS.

It is essential that committees with the power to make recommendations insist that the government takes immediate action to clearly and unequivocally label sugar content on all consumer products. I believe the teaspoon symbol would be the most effective step towards the health of this nation.

Submission for the Public Consultation Review of the Food Standard Australian Nerw Zealand Act 1991- draft Regulatory Impact Statement Government Department of Health regarding sugar labelling.

It was not so long ago that the tobacco industry was so powerful it was virtually untouchable. For decades the destructive effect on health and the social and economic damage done by this product was pushed aside by governments. Such was the power the tobacco lobby brought to bear.

Today we are experiencing the same sort of power from the sugar industry as it resists government endeavours to simply inform consumers about the quantity of sugar in all food products.

It is only a matter of time before a government of Australia takes action on effective sugar labelling in this country. The longer it takes, the health of Australians deteriorates, the economic and social impact deepens and the poorer it reflects on the inaction of governments of the day.

Initiating measures to effectively label sugar content in food is not rocket science.

As an Australian resident, taxpayer and consumer the only reason I can see for prevarication is that vested interests are prevailing through political pressure on the government. Should this be so it is a scandal of abnegated responsibility that must be challenged. If this is not so I would like to know the reasons why effective sugar content labelling on food is not currently being legislated especially as it is easy to rattle off dozens of reasons why it should be mandated now.

A teaspoon is an international symbol and a standard of measure. The number of teaspoons on a food item is a clear indication of the amount of sugar in the product. A teaspoon symbol must be a standard ratio to the size of the label and highly visible.

1.**The teaspoon symbol is easily recognisable.** It gives busy consumers a quick clear indication of the sugar the product contains. They then make an informed choice when they purchase a food item. (Objections to this shows manufacturers' dependence on concealing the fact of sugar content).
NB. A bonus outcome could be that manufacturers reduce the quantity of sugar in their product.

2.**The teaspoon symbol removes the need for added words** on labelling and crosses language barriers. (Objections to this cannot be sustained as unless the product is full of hidden sugars the teaspoon symbol would require little space on the labelling).
NB Again a bonus outcome of this could lead to a manufacturers' revision of sugar content.

3. The standard prescribed teaspoon symbol would entail a minimal amount of expense in the costs of labelling . Manufacturers cannot therefore use the threat of additional cost measures to consumers as a deterrent.

It is indisputable that sugar used wisely is a useful and pleasing commodity. No one is suggesting draconian measures such as the skull and crossbones type symbols on tobacco labelling. What is absolutely indisputable is that the present ignorance about their sugar consumption is killing and disabling thousands of Australians each year, battering our economy and straining our health services. The teaspoon labelling of sugar content in food will give consumers instant information that is currently concealed. **Their decisions on the sugar content of what they choose to eat will be informed**. A positive outcome from this will see the health of the nation improve and resources redirected where sugar is not the contributory factor to death and disease.

The time to talk about effective sugar labelling of food is long past. The evidence for the urgent need to do so is over whelming. Make the recommendation. Ensure parliament addresses it and endorses the teaspoon symbol as a legal requirement on all food labelling NOW.

Brian Prentice
[redacted]

Australian Government

Australian Small Business and Family Enterprise Ombudsman

24 May 2021

Department of Health
Food Standards Australia New Zealand
GPO Box 9848
Canberra ACT 2601

via email: *FoodRegulationModernisation@health.gov.au*

Dear Sir/Madam

Review of the Food Standards Australia New Zealand Act 1991 – draft Regulatory Impact Statement

We support Option 2 and the further amendments in Option 3 in the draft Regulatory Impact Statement (RIS) presented in the review of the Food Standards Australia New Zealand Act 1991 in reforming and modernising the food regulation system. This first major review in 30 years, conducted through the RIS offers the best opportunity to address jurisdictional inconsistencies in regulatory interpretations through a national approach.

Option 2

Component 3 | Build in flexibility to create bespoke regulatory sandboxes

We support industry innovation and the potential to improve market outcomes through the creation of regulatory sandboxes, on a case-by-case basis, that would provide a safe harbour for essential services to operate while complex regulation is modernised. A clear example of the benefits of a regulatory sandbox can be seen in the recent issues faced by Australia Post in delivering perishable goods from small business food producers.

In this case, a regulatory sandbox could have helped Australia Post, in conjunction with industry regulators and state-based Small Business Commissioners, to navigate a complex problem-solving process surrounding the differing food regulation requirements across the jurisdictions. A safe harbour could have helped to ensure the essential delivery service continues for business to consumer food transactions, while jurisdictional regulatory inconsistencies are addressed.

Such a mechanism would provide greater confidence for small business food producers that the delivery service would continue. It would also encourage innovation in food packaging while providing time for Australia Post to incorporate appropriate safeguards and demonstrate that their practices have not resulted in any foodborne illnesses.

Component 4 | Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation

We support resourcing FSANZ to undertake regular holistic reviews of standards to ensure right-sized regulation for industry under RIS Option 2. The COVID-19 pandemic led to many small business and family enterprises exploring e-commerce options to maintain business continuity. As Australia moves toward greater digitisation, more small businesses look for certainty in regulation and food standards to ensure their products can reach as many customers as possible. As identified in policy

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Problem 2 (3.3.1), current legislative amendments are piecemeal and reactive which leads to an overarching compliance burden and economic impact, especially on small businesses. Small businesses must then navigate the many interpretations of food standards application and the relevant authorities. For example, some jurisdictions have additional food agencies, separate to the Department of Health, and therefore embed additional layers of regulation and communication to small businesses. While enforcement liabilities are reasonably consistent across all states and territories, interpretation of the standards causes significant concern, with our office seeing this most apparent in varying approaches at a municipal level to food practice regulation and monitoring. Component 4 would address this compliance duplication while enabling FSANZ to provide agile and forward looking regulation.

Option 3

Component 2 | Provide for FSANZ to give greater guidance on food standards

We recommend FSANZ investigate regulatory technology (RegTech) solutions to connect all state and territory jurisdictions and establish a single, joint food standard system. Any such development must include all of the states and territories to ensure that the system achieves the desired level of ease of use.

Development of a RegTech solution would be particularly beneficial in addressing the cross-jurisdictional regulatory environment that is complex to navigate and monitor. Improving data collection through digitised forms, registers and transactions could reduce compliance costs, enable better regulatory outcomes and reduce the compliance burden for small businesses. As identified in the RIS, a significant issue for small food businesses who trade across jurisdictional borders is the additional costs imposed to adapt production and distribution chains to meet compliance in the different jurisdictions. This is particularly important for small businesses who may not have the resources to engage help to navigate all state and territory regulatory requirements or modify their business operations to cater for all regulatory requirements.

We recommend that any future considerations regarding cost recovery consider small businesses and their ability to derive the maximum benefit of modernisation while not shouldering the cost burden of reform. Pursuit of Option 3 would present a positive outcome for small businesses and although FSANZ's substantive funding arrangements fall outside of the scope of the review, we recommend that FSANZ investigate funding arrangements that see the states and territories contributing to the FSANZ revenue stream. This would work in concert with the development of a RegTech solution to harmonise the connection of all state and territory jurisdictions under a joint food standard system.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Rowen Murphy on [redacted] or at [redacted].

Yours sincerely

[redacted]

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

[redacted]

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-27 15:30:55**

About you

What is your name?

Name:
John Preston

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Beverage sector

What is your organisation?

Organisation:
Brewers Association of Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Brewers Association of Australia is the peak industry body representing Australia's
premier beer makers.
The Association and its members – Carlton & United Breweries, Lion Beer Australia and Coopers Brewery – encompass 90% of all beer sales in Australia.
With 95% of all beer sold in Australian being made in Australia, the brewing sector underpins over 94,000 full-time equivalent Australian jobs (over 128,000 jobs in total) and generates $15.6 billion a year in economic activity – accounting for 1% of GDP.
Australian agriculture is a major contributor to the success of the beer industry, producing a massive 1 million tonnes of barley a year across Australia for domestic beer production and 600 tonnes of Tasmanian and Victorian hops.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

An effective food and beverage regulatory system is essential to ensuring that Australians and New Zealanders have safe, suitable and sufficient food. The current food regulatory system in Australia and New Zealand has proven to be robust and effective in achieving these objectives. The current system may require a tune-up, but it is far from being fundamentally broken.
The Brewers Association believes that the best outcome of this review would be a food
regulatory system that retains its general structure, but with an increased focus on managing the risks to consumers of unsafe food and false or inadequate information to inform purchasing decisions.
We also believe that there are efficiencies, improvements or enhancements that can be
generated to ensure that the food regulatory system is not a source of undue cost or difficulty for the food businesses that keep Australia and New Zealand supplied with safe and good quality food and beverages.

Most importantly, we believe that the central role played by Food Standards Australian and New Zealand (FSANZ) as an independent science-based standard-setting body has been, and must continue to be, a key element of the successful development of the food and beverage sectors in Australia and New Zealand.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The Brewers Association strongly opposes any expansion of the objectives of FSANZ into sustainability.
This expansion would lead to duplications with other agencies' responsibilities and take the work of FSANZ far beyond its core purpose.
We are concerned that this proposed significant extension of the functions of FSANZ into such a wide variety of different issue areas would invariably lead to increased disagreement amongst the various jurisdictions served by FSANZ and particularly between Australia and New Zealand.
Consumer preferences as well as a range of other government and regulatory mechanisms are already driving private sector businesses to be more sustainable. By way of example, each Brewers Association member has ambitious, quantifiable sustainability agendas and targets in place already. The additional regulation that would invariably stem from a FSANZ move into sustainability would also lead to significant extra costs for business.
There should be no legislated changes to expand the objectives of FSANZ in
relation to food sustainability.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The Brewers Association believes that the best outcome of this review would be a food
regulatory system that retains its general structure, but with an increased focus on managing the risks to consumers of unsafe food and false or inadequate information to inform purchasing decisions.
We also believe that there are efficiencies, improvements or enhancements that can be
generated to ensure that the food regulatory system is not a source of undue cost or difficulty for the food businesses that keep Australia and New Zealand supplied with safe and good quality food and beverages.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The above benefits would not be achieved through retaining the status quo. The magnitude of consequences from this, however, would be less than the damage done by the expansion of FSANZ functions into public health and sustainability proposed in Options 2 and 3.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The central role played by Food Standards Australian and New Zealand (FSANZ) as an independent science-based standard-setting body has been, and must continue to be, a key element of the successful development of the food and beverage sectors in Australia and New Zealand. FSANZ has proven itself to be competent and effective in this role. To provide for a higher degree of intervention in the activities of FSANZ by governments and experts outside FSANZ challenges the scientific objectivity that
is one of the key benefits of the system.
The draft Regulatory Impact Statement references the recent update of the Food Safety Modernisation Act (FSMA) in the United States of America (p.21). We welcome this reference as the review undertaken in the USA focused on positive measures such as the use of technology to trace food and improve communications on immediate safety issues; updating the regulatory system to deal with modern food delivery services; and promoting a better food safety culture. It did not focus on expanding into areas such as broad-based public health campaigning and sustainability issues.
This is why we strongly oppose proposals in the draft Regulatory Impact Statement (RIS) to re-construct the food regulatory system around a broad public health or sustainability remit for any matters related to food.
The object of the FSANZ Act is “public health protection”. Public health protection is a subset of public health, which relates to preventing or mitigating threats rather than to promotion of broader public health objectives generally. In the case of the FSANZ Act, the object of public health protection applies specifically in relation to food. Public health protection in this context will primarily relate to unsafe food or lack of information about a food item.
The Brewers Association’s strong view is that the scope of the food regulatory system is already sufficiently established by the FSANZ Act, the FRA and the Joint Food Standards Treaty. To the extent that there are areas of uncertainty, these have been generated by attempts to push the food regulatory system beyond its core objectives.
As above, we consider that protecting the health and safety of consumers by reducing risks related to food is a core function of the food regulatory system. While there are some areas where improvements could be made, the food regulatory system is generally effective in performing this function.
The Brewers Association does not agree that the food regulatory system is the best place to address broader public health and nutrition issues beyond public health protection. Longer term public health and nutrition issues are fundamentally social issues requiring a multi faceted response that draws upon a wide range of regulatory and non-regulatory tools. They require complex political decision-making that demands a careful weighing of social and economic factors, which is not the function of the food regulatory system.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The Brewers Association strongly opposes any such expansion of the objectives of FSANZ.
This expansion would lead to duplications with other agencies’ responsibilities and take the work of FSANZ far beyond its core purpose.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

We are concerned that this proposed significant extension of the functions of FSANZ into
such a wide variety of different issue areas would invariably lead to increased disagreement amongst the various jurisdictions served by FSANZ and particularly between Australia and New Zealand.
Consumer preferences as well as a range of other government and regulatory mechanisms are already driving private sector businesses to be more sustainable. By way of example, each Brewers Association member has ambitious, quantifiable sustainability agendas and targets in place already. The additional regulation that would invariably stem from a FSANZ move into sustainability would also lead to significant extra costs for business.

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The Brewers Association does not support delegation of decision making from the Food Ministers' Meeting to the FSANZ Board. It is important that elected representatives, who represent the broad and differing constituencies of Australia, are the ultimate decision makers. This ensures decision making that is well-balanced and takes into account broader economic and societal consequences. FSANZ's role should continue to focus on assessing risk to public health and safety, standard setting, and providing recommendations to the Food Ministers' Meeting for decision based on current evidence. Moreover, we submit 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.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The Brewers Association believes that this review provides an opportunity to consider how the Department of Health and FSANZ could work more closely with the Department of Agriculture, Water and the Environment (DAWE) on food industry issues. DAWE'S experience and expertise in the regulation of agricultural produce, including its remit to help deliver a productive, competitive and sustainable agricultural sector, the regulation of imported food and its safety, and to drive research and innovation in agriculture and agri-businesses means it has much to offer in terms of oversight. Greater involvement for DAWE would reflect the partnership approach to the CODEX Alimentarius taken by the World Health Organisation and the Food and Agriculture Organisation of the United Nations.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The Brewers Association believes that this question should be more focussed upon addressing the key challenges facing the food regulatory system specifically, rather than the food system generally. Our view as to the challenges facing the food regulatory system relate primarily to: ensuring that business is recognised as a key stakeholder within the system; ensuring that appropriate governance arrangements are observed; ensuring that the system can maintain the focus of the food regulatory system on core functions while modernising the tools to do this.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
Brewers Association of Australia - FSANZ Modernisation - May 2021.pdf was uploaded

Submission

Modernising the FSANZ Act – Draft Regulatory Impact Statement

May 2021

About the Brewers Association

The Brewers Association of Australia is the peak industry body representing Australia's premier beer makers.

The Association and its members – Carlton & United Breweries, Lion Beer Australia and Coopers Brewery – encompass 90% of all beer sales in Australia.

With 95% of all beer sold in Australian being made in Australia, the brewing sector underpins over 94,000 full-time equivalent Australian jobs (over 128,000 jobs in total) and generates $15.6 billion a year in economic activity – accounting for 1% of GDP.

Australian agriculture is a major contributor to the success of the beer industry, producing a massive 1 million tonnes of barley a year across Australia for domestic beer production and 600 tonnes of Tasmanian and Victorian hops.

Introduction

An effective food and beverage regulatory system is essential to ensuring that Australians and New Zealanders have safe, suitable and sufficient food. The current food regulatory system in Australia and New Zealand has proven to be robust and effective in achieving these objectives. The current system may require a tune-up, but it is far from being fundamentally broken.

The Brewers Association believes that the best outcome of this review would be a food regulatory system that retains its general structure, but with an increased focus on managing the risks to consumers of unsafe food and false or inadequate information to inform purchasing decisions.

We also believe that there are efficiencies, improvements or enhancements that can be generated to ensure that the food regulatory system is not a source of undue cost or difficulty for the food businesses that keep Australia and New Zealand supplied with safe and good quality food and beverages.

Most importantly, we believe that the central role played by Food Standards Australian and New Zealand (FSANZ) as an independent science-based standard-setting body has been, and must continue to be, a key element of the successful development of the food and beverage sectors in Australia and New Zealand. FSANZ has proven itself to be competent and effective in this role. To provide for a higher degree of intervention in the activities of FSANZ by governments and experts outside FSANZ challenges the scientific objectivity that is one of the key benefits of the system.

The draft Regulatory Impact Statement references the recent update of the Food Safety Modernisation Act (FSMA) in the United States of America (p.21). We welcome this reference as the review undertaken in the USA focused on positive measures such as the use of technology to trace food and improve communications on immediate safety issues; updating the regulatory system to deal with modern food delivery services; and promoting a better food safety culture. It did not focus on expanding into areas such as broad-based public health campaigning and sustainability issues.

This is why we strongly oppose proposals in the draft Regulatory Impact Statement (RIS) to re-construct the food regulatory system around a broad public health remit for any matters related to food.

FSANZ objectives and functions – Public Health

The RIS states that the objectives and current functions of FSANZ are not clear and that the objective of 'protecting public health' in particular needs defining. The document then goes on to cite text from a ministerial guideline issued by the Food Ministers' Meeting (then the Forum) in 2013 stating 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"* (page 25).

In relation to FSANZ's role the document also notes the following:

> *"There is currently ambiguity around FSANZ's broader role in achieving public health, nutrition, and safety objectives beyond acute food safety issues, such as promoting healthy eating and protecting Australians and New Zealanders from diet-related diseases…...This ambiguity relates partly to the current statement of objectives in the Act"* (page 29).

In order the address this issue the document goes on to state that "small changes to the objectives may remove ambiguity and create a clear set of legislated priorities" (p.52). In relation to public health it proposes "Clarifying s 3 of the Act by including a definition of 'protecting public health and safety' that encapsulates both acute and long-term health elements" and again provides, as an example, the definition issued in the Ministerial Policy Statement as follows:

> "*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*" (page 52).

The Brewers Association view is that the objectives of the food regulatory system are already well stated in the Food Regulation Agreement (FRA) and in Section 3 of the FSANZ Act. The objective of the FRA is "providing safe food controls for the purpose of protecting public health and safety".

The object of the FSANZ Act is "public health protection". Public health protection is a subset of public health, which relates to preventing or mitigating threats rather than to promotion of broader public health objectives generally. In the case of the FSANZ Act, the object of public health protection applies specifically in relation to food. Public health protection in this context will primarily relate to unsafe food or lack of information about a food item.

The Brewers Association's strong view is that the scope of the food regulatory system is already sufficiently established by the FSANZ Act, the FRA and the Joint Food Standards Treaty. To the extent that there are areas of uncertainty, these have been generated by attempts to push the food regulatory system beyond its core objectives.

As above, we consider that protecting the health and safety of consumers by reducing risks related to food is a core function of the food regulatory system. While there are some areas where improvements could be made, the food regulatory system is generally effective in performing this function.

The Brewers Association does not agree that the food regulatory system is the best place to address broader public health and nutrition issues beyond public health protection. Longer-term public health and nutrition issues are fundamentally social issues requiring a multi-

faceted response that draws upon a wide range of regulatory and non-regulatory tools. They require complex political decision-making that demands a careful weighing of social and economic factors, which is not the function of the food regulatory system.

Recommendations:

1. **Remove references in the document to the need to clarify objectives and functions of FSANZ in relation to public health.**
2. **Reiterate in the document the core objective of FSANZ and food regulation the need to provide 'safe controls for the purpose of protecting public health and safety."**

FSANZ objectives and functions – sustainability

The RIS also raises as an issue that "FSANZ's objectives are currently mute on the issues of food sustainability" (p.26).

It states that:

> "*Sustainability in a food regulation context could be…..broadened to encompass food security, health, economic and social impacts*" (p.26)

And that:

> "*Environmental sustainability contemplates the impact of agricultural practices, food processing, distribution, packaging, and other activities in the food supply change on climate change, biodiversity, soils and waterways, and ultimately future food security. Examples of environmentally unsustainable practices include high levels of greenhouse gas emissions from livestock, inappropriate aquaculture practices and excessive plastic packaging*" (p.26)

The document proposes:

> "Expanding the objectives of FSANZ to address important priorities of food sustainability. This change would ensure FSANZ can systematically consider food sustainability as a cross cutting issue and ensure that the Act is fit for purpose in the longer term" (p.52).

The Brewers Association strongly opposes any such expansion of the objectives of FSANZ. This expansion would lead to duplications with other agencies' responsibilities and take the work of FSANZ far beyond its core purpose.

We are concerned that this proposed significant extension of the functions of FSANZ into such a wide variety of different issue areas would invariably lead to increased disagreement amongst the various jurisdictions served by FSANZ and particularly between Australia and New Zealand.

Consumer preferences as well as a range of other government and regulatory mechanisms are already driving private sector businesses to be more sustainable. By way of example, each Brewers Association member has ambitious, quantifiable sustainability agendas and targets in place already. The additional regulation that would invariably stem from a FSANZ move into sustainability would also lead to significant extra costs for business.

Recommendations:

1. **There should be no legislated changes to expand the objectives of FSANZ in relation to food sustainability.**

Other Issues

- **Governance**:
    - We believe that the final composition of the FSANZ Board (after any streamlining) should include members with extensive experience from the food and beverage industry to ensure a detailed understanding of the costs and impact of regulatory solutions proposed.
    - The Brewers Association does not support delegation of decision making from the Food Ministers' Meeting to the FSANZ Board. It is important that elected representatives, who represent the broad and differing constituencies of Australia, are the ultimate decision makers. This ensures decision making that is well-balanced and takes into account broader economic and societal consequences. FSANZ's role should continue to focus on assessing risk to public health and safety, standard setting, and providing recommendations to the Food Ministers' Meeting for decision based on current evidence. Moreover, we submit 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.
- **Department of Agriculture, Water and the Environment** - The Brewers Association believes that this review provides an opportunity to consider how the Department of Health and FSANZ could work more closely with the Department of Agriculture, Water and the Environment (DAWE) on food industry issues. DAWE'S experience and expertise in the regulation of agricultural produce, including its remit to help deliver a productive, competitive and sustainable agricultural sector, the regulation of imported food and its safety, and to drive research and innovation in agriculture and agri-businesses means it has much to offer in terms of oversight. Greater involvement for DAWE would reflect the partnership approach to the CODEX Alimentarius taken by the World Health Organisation and the Food and Agriculture Organisation of the United Nations.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-31 10:04:45**

About you

What is your name?

Name:
Madelon de Jongh

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Auckland Regional Public Health Service

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to New Zealand and Australia: 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, and the provision of adequate information to enable consumers to make informed choices.
Currently, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness and this protection must be maintained. However, New Zealanders are not effectively protected from long-term health impacts linked to food. One in three New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably, with those adults living in the most socioeconomically deprived areas being 1.8 times more likely to be obese as adults living in the least deprived areas, and the prevalence of obesity among adults differing by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult obesity rate in the OECD with the rates continuing to increase. The proportion of morbid obesity represents as much as 70-80% of this obesity growth.

Most New Zealanders have poor diets. A recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%). The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfill the review's Terms of Reference, which calls for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives, and its ultimate objectives

are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. In New Zealand according, to the Ministry of Health, it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

It is recommended that the RIS is revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and therefore will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches presented in the RIS also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

ARPHS notes that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve "less regulatory intervention and associated regulatory burden", as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone, the current system, which the draft RIS acknowledges has "managed to largely prevent the market failures that they are designed to address" represents a better outcome. ARPHS is concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in ARPHS's view the current system represents a better outcome for public health than Options 2 or 3

presented in the RIS. This is because:

● The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the New Zealand/Australian context before adoption. ARPHS supports the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

● The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health
Key risks to consumers and to public health in retaining the status quo are:

● The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as it is known that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to government. These risks are not included in the draft RIS. The RIS should therefore be amended to include a detailed assessment of these risks.

● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo option will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.

Risks to government
● A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.
Risks to industry
● ARPHS acknowledges that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. ARPHS does not, however, accept the quantification of these costs in the RIS. ARPHS is concerned that, in multiple instances (see page 71 of the consultation document), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In ARPHS's view, this is likely to lead to a significantly exaggerated cost. ARPHS asks that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

ARPHS notes that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach should not used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.
The RIS states (page 18 of the consultation document) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.
Costs and benefits that must be considered for option 1 include:
Costs
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.

● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.

● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
● The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market

● The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.
This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for Options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely to reflect best practice.
Case Study: Pregnancy warning labels on alcohol
The recent proposal in Australia and New Zealand 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 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 almost 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.
This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and dietary linked non-communicable diseases (including heart disease and cancer) in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.
The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.
Key risks to consumers and to public health in retaining the status quo are:
● The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

● These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.

● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS does not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.
The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.
ARPHS is concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.
ARPHS discusses specific components in turn:
Objects and factors to which FSANZ must have regard
1. Clarification of definition of public health
ARPHS agrees that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. ARPHS supports the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.
2. Inclusion of trade as a core goal
ARPHS strongly opposes this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.
The elevation of trade is unnecessary. The draft RIS itself notes that the status quo (which does not include trade as a core objective) "has delivered good trade outcomes over many years". This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.
Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '.... adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.
3. Food sustainability
ARPHS supports the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.
4. Indigenous culture and expertise
ARPHS supports the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food

regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.
In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.
Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.
5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard
ARPHS strongly opposes the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.
6. Further changes to s18 – and role of FSANZ
ARPHS notes that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. ARPHS does not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.
FSANZ functions
ARPHS support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.
ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (page 15), this role should remain in the Food Ministers' hands.
ARPHS does not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In ARPHS's view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.
Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure
ARPHS supports establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.
Costs and benefits of Component 1
ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.
The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

ARPHS supports a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The

Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.

ARPHS supports an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, ARPHS supports some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. ARPHS does not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines
ARPHS agrees that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, ARPHS does not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

ARPHS supports the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals
In theory, ARPHS supports the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. ARPHS notes the proposed risk framework in the RIS (Table 5) and make the following comments:
● Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
● While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time

● ARPHS does not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.
This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

ARPHS agrees that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.
Delegation by FSANZ Board and Food Ministers Meeting
ARPHS do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

ARPHS considers it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.
ARPHS does not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.
New product approval pathways
Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of

beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (page 36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (page 37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks
ARPHS strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

ARPHS notes that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

ARPHS strongly opposes the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.
Industry-led pathways
ARPHS strongly opposes the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

ARPHS strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. ARPHS notes the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

ARPHS knows from New Zealand experience with health claims that self-substantiation is not effective, and does not support its expansion

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding another route that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

ARPHS does not think codes of practice and guidelines should replace food standards. ARPHS considers that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS strongly opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

ARPHS notes the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

ARPHS is also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. ARPHS does not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

ARPHS does not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

ARPHS does not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall ARPHS does not support this component. ARPHS does not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be avoided, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

Changing FSANZ Board arrangements

ARPHS does not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. ARPHS does not support any increase in industry representation on the Board, and ARPHS recommends industry representation be reduced to one member.

ARPHS recommends retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. ARPHS does not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. ARPHS also does not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

Investment into business solutions

ARPHS supports an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

ARPHS understands the RIS notes it is outside the scope of the review, however ARPHS is concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.
New cost-recovery mechanisms for industry-initiated work
ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (page 36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (page 37). ARPHS recommends the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual New Zealand consumers and on New Zealand's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by

governments.

This analysis must include:
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
● The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers
Costs and benefits of Component 1
ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As ARPHS highlighted previously, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.
There is New Zealand 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 RIS of the impact of the proposed reforms on public health outcomes.
It is known that many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. The contribution that a poor diet and overweight and obesity make to the burden of disease in New Zealand is also known. Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS 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 New Zealand as $8.6 billion in direct and indirect costs (PWC report reference). 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.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.
If additional cost-recovery mechanisms are introduced, ARPHS is concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS acknowledges that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.
ARPHS strongly recommends that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. ARPHS also recommends the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.
The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

ARPHS does not engage with the system by requesting applications to change food standards. This is because the current system is biased towards industry interests and there is no clear pathway designed for public health organisations to request review and amendment of food standards as a whole, taking into account the effect of food supply in its entirety on public health.
ARPHS engages with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that require significant resources to engage and advocate for change. It is very often difficult for PH organisations to have sufficient resource to prioritise this engagement in a timely manner. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.
The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.
The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

ARPHS is concerned that Option 3 is not aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

ARPHS does not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards
ARPHS supports FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst ARPHS supports independent industry guidelines developed by FSANZ ARPHS does not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

ARPHS does not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine
ARPHS is not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. ARPHS does not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS does, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (page 36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (page 37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealands. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

● Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
● Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
● Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
● Set statutory timeframes for proposals.
● Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
● Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims,

the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
None. ARPHS does not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, ARPHS does not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3
None. ARPHS does not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).
ARPHS consider the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. The aspirations are very public health focused and the options presented will not enable the aspirations to be met. None of the options address the current issue of application timeframes and the prioritisation of these over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives (all public health asks in the consultation).

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-31 13:13:35**

About you

What is your name?

Name:
Natalia Malinowski

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Public Health Clinical Network

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to New Zealand and Australia: 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, and the provision of adequate information to enable consumers to make informed choices.
Currently, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness and this protection must be maintained. However, New Zealanders are not effectively protected from long-term health impacts linked to food. One in three New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably, with those adults living in the most socioeconomically deprived areas being 1.8 times more likely to be obese as adults living in the least deprived areas, and the prevalence of obesity among adults differing by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult obesity rate in the OECD with the rates continuing to increase. The proportion of morbid obesity represents as much as 70-80% of this obesity growth.

Most New Zealanders have poor diets. A recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%). The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfill the review's Terms of Reference, which calls for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives, and its ultimate objectives

are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. In New Zealand according, to the Ministry of Health, it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

It is recommended that the RIS is revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and therefore will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches presented in the RIS also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

ARPHS notes that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve "less regulatory intervention and associated regulatory burden", as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone, the current system, which the draft RIS acknowledges has "managed to largely prevent the market failures that they are designed to address" represents a better outcome. ARPHS is concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in ARPHS's view the current system represents a better outcome for public health than Options 2 or 3

presented in the RIS. This is because:

● The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the New Zealand/Australian context before adoption. ARPHS supports the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

● The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health
Key risks to consumers and to public health in retaining the status quo are:

● The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as it is known that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to government. These risks are not included in the draft RIS. The RIS should therefore be amended to include a detailed assessment of these risks.

● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo option will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.

Risks to government
● A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.
Risks to industry
● ARPHS acknowledges that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. ARPHS does not, however, accept the quantification of these costs in the RIS. ARPHS is concerned that, in multiple instances (see page 71 of the consultation document), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In ARPHS's view, this is likely to lead to a significantly exaggerated cost. ARPHS asks that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

ARPHS notes that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach should not used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.
The RIS states (page 18 of the consultation document) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.
Costs and benefits that must be considered for option 1 include:
Costs
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.

● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.

● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
● The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market

● The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.
This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for Options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely to reflect best practice.
Case Study: Pregnancy warning labels on alcohol
The recent proposal in Australia and New Zealand 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 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 almost 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.
This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and dietary linked non-communicable diseases (including heart disease and cancer) in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.
The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.
Key risks to consumers and to public health in retaining the status quo are:
● The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

● These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.

● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS does not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.
The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.
ARPHS is concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.
ARPHS discusses specific components in turn:
Objects and factors to which FSANZ must have regard
1. Clarification of definition of public health
ARPHS agrees that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. ARPHS supports the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.
2. Inclusion of trade as a core goal
ARPHS strongly opposes this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.
The elevation of trade is unnecessary. The draft RIS itself notes that the status quo (which does not include trade as a core objective) "has delivered good trade outcomes over many years". This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.
Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '.... adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.
3. Food sustainability
ARPHS supports the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.
4. Indigenous culture and expertise
ARPHS supports the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food

regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.
In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.
Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.
5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard
ARPHS strongly opposes the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.
6. Further changes to s18 – and role of FSANZ
ARPHS notes that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. ARPHS does not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.
FSANZ functions
ARPHS support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.
ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (page 15), this role should remain in the Food Ministers' hands.
ARPHS does not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In ARPHS's view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.
Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure
ARPHS supports establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.
Costs and benefits of Component 1
ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.
The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

ARPHS supports a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. The

Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.

ARPHS supports an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, ARPHS supports some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. ARPHS does not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines
ARPHS agrees that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, ARPHS does not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

ARPHS supports the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals
In theory, ARPHS supports the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. ARPHS notes the proposed risk framework in the RIS (Table 5) and make the following comments:
● Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
● While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time

● ARPHS does not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.
This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

ARPHS agrees that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.
Delegation by FSANZ Board and Food Ministers Meeting
ARPHS do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

ARPHS considers it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.
ARPHS does not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.
New product approval pathways
Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of

beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (page 36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (page 37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks
ARPHS strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

ARPHS notes that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

ARPHS strongly opposes the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.
Industry-led pathways
ARPHS strongly opposes the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

ARPHS strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. ARPHS notes the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

ARPHS knows from New Zealand experience with health claims that self-substantiation is not effective, and does not support its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding another route that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

ARPHS does not think codes of practice and guidelines should replace food standards. ARPHS considers that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS strongly opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

ARPHS notes the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

ARPHS is also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. ARPHS does not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

ARPHS does not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

ARPHS does not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall ARPHS does not support this component. ARPHS does not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be avoided, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

Changing FSANZ Board arrangements

ARPHS does not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. ARPHS does not support any increase in industry representation on the Board, and ARPHS recommends industry representation be reduced to one member.

ARPHS recommends retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. ARPHS does not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. ARPHS also does not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

Investment into business solutions

ARPHS supports an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

ARPHS understands the RIS notes it is outside the scope of the review, however ARPHS is concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.
New cost-recovery mechanisms for industry-initiated work
ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (page 36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (page 37). ARPHS recommends the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual New Zealand consumers and on New Zealand's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by

governments.

This analysis must include:
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
● The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers
Costs and benefits of Component 1
ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As ARPHS highlighted previously, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.
There is New Zealand 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 RIS of the impact of the proposed reforms on public health outcomes.
It is known that many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. The contribution that a poor diet and overweight and obesity make to the burden of disease in New Zealand is also known. Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS 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 New Zealand as $8.6 billion in direct and indirect costs (PWC report reference). 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.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.
If additional cost-recovery mechanisms are introduced, ARPHS is concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS acknowledges that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.
ARPHS strongly recommends that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. ARPHS also recommends the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.
The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

ARPHS does not engage with the system by requesting applications to change food standards. This is because the current system is biased towards industry interests and there is no clear pathway designed for public health organisations to request review and amendment of food standards as a whole, taking into account the effect of food supply in its entirety on public health.
ARPHS engages with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that require significant resources to engage and advocate for change. It is very often difficult for PH organisations to have sufficient resource to prioritise this engagement in a timely manner. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.
The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.
The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

ARPHS is concerned that Option 3 is not aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

ARPHS does not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards
ARPHS supports FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst ARPHS supports independent industry guidelines developed by FSANZ ARPHS does not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

ARPHS does not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine
ARPHS is not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. ARPHS does not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS does, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (page 36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (page 37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealands. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

● Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
● Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
● Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
● Set statutory timeframes for proposals.
● Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
● Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims,

the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
None. ARPHS does not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, ARPHS does not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3
None. ARPHS does not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).
ARPHS consider the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. The aspirations are very public health focused and the options presented will not enable the aspirations to be met. None of the options address the current issue of application timeframes and the prioritisation of these over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives (all public health asks in the consultation).

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
PHCN_Submission_FSANZ_31052021.pdf was uploaded

31 May 2021

Food Regulation Modernisation
FoodRegulationModernisation@health.gov.au

Re: Public Consultation – Review of the Food Standards Australia New Zealand Act 1991 – draft Regulatory Impact Statement

Kia ora koutou,

Public Health Clinical Network would like to formally register our agreement and support for the submission and recommendations made by Auckland Regional Public Health Service on the Review of the Food Standards Australia New Zealand Act 1991.

Due to the current time commitments for the Public Health Clinical work, our capacity to provide a submission on the Review of the Food Standards Australia New Zealand Act 1991 has been impacted. Public Health Units often collaborate and share ways of working to support efficiency when resources are limited. The Public Health Clinical Network has, therefore, chosen to support the thorough submission made by the Auckland Regional Public Health Service.

Thank you for the opportunity to provide input into the Review of the Food Standards Australia New Zealand Act 1991 via this submission and via our support of the Auckland Regional Public Health Submission.

The primary contact point for this submission is:

Natalia Malinowski
PHCN Secretariat
[redacted]

Yours sincerely

[redacted]

Jane McEntee
Chair, Public Health Clinical Network

Public Consultation - Review of the Food Standards New Zealand New Zealand Act 1991 - draft Regulatory Impact Statement

Due 18 May, ask for an extension (two weeks, to get one): FoodRegulationModernisation@health.gov.au. Submissions via the Department of Health's Consultation Hub

Policy Problems

Please read section 3 'The problems to solve' (pages 19 - 46) of the draft Regulatory Impact Statement before answering the questions below.

1. **Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?**

   The RIS must consider the following policy problem that applies both to New Zealand and Australia: 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, and the provision of adequate information to enable consumers to make informed choices. Currently, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness and this protection must be maintained. However, New Zealanders are not effectively protected from long-term health impacts linked to food. One in three New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably, with those adults living in the most socioeconomically deprived areas being 1.8 times more likely to be obese as adults living in the least deprived areas, and the prevalence of obesity among adults differing by ethnicity, with 63.4% of Pacific, 47.9% of Māori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult obesity rate in the OECD with the rates continuing to increase.[1] The

[1] (Ministry of Health. 2020. Annual Data Explorer 2019/20: New Zealand Health Survey [Data File]. URL: https://minhealthnz.shinyapps.io/nz-health-survey-2019-20-annual-data-explorer/)

proportion of morbid obesity represents as much as 70-80% of this obesity growth.[2]

Most New Zealanders have poor diets. A recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%).[3] The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfill the review's Terms of Reference, which calls for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives, and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for Māori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. In New Zealand according, to the Ministry of Health, it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for Māori and Pacific populations and high burden on the health system. Priority groups such as Māori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in Māori and Pacific populations is around three times higher than among other New Zealanders. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular Māori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect Māori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to Māori. The Auckand Regional Public Health Services (ARPHS) is concerned that

[2] The Heavy Burden of Obesity: The Economics of Prevention, OECD Health Policy Studies, OECD Publishing, Paris, https://doi.org/10.1787/67450d67-en) disease.
[3] https://www.sciencedirect.com/science/article/abs/pii/S2212267220312302?via%3Dihub

the current proposals have not been consulted on with Māori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with Māori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

It is recommended that the RIS is revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and therefore will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches presented in the RIS also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2. **What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?**

ARPHS notes that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect Māori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for Māori and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for Māori and Pacific populations and high burden on the health system. Priority groups such as Māori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular Māori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to

protect Māori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to Māori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with Māori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with Māori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

Option 1: Retain the status quo

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.1 'Impacts of Option 1: Retain the status quo' (pages 69 to 74) of the draft Regulatory Impact Statement before answering the questions below.

4. **Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

   NEGATIVE

   Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve "less regulatory intervention and associated regulatory burden", as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone, the current system, which the draft RIS acknowledges has "managed to largely prevent the market failures that they are designed to address" represents a better outcome. ARPHS is concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

   The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

   Despite the overall negative impact of the status quo, in ARPHS's view the current system represents a better outcome for public health than Options 2 or 3 presented in the RIS. This is because:

- The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the New Zealand/Australian context before adoption. ARPHS supports the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

- The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5. **What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?**

   Risks to consumers and public health
   Key risks to consumers and to public health in retaining the status quo are:

   - The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as it is known that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to government. These risks are not included in the draft RIS. The RIS should therefore be amended to include a detailed assessment of these risks.

   - The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo option will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.

Risks to government

- A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy Options 2 and 3 presented in the draft RIS.

Risks to industry

- ARPHS acknowledges that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. ARPHS does not, however, accept the quantification of these costs in the RIS. ARPHS is concerned that, in multiple instances (see page 71 of the consultation document), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In ARPHS's view, this is likely to lead to a significantly exaggerated cost. ARPHS asks that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

Despite the risks identified above, ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

6. **Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data. [Comment box, plus opportunity to provide attachments]**

   ARPHS notes that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach should not used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

   As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7. **Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?**

   Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

   The RIS states (page 18 of the consultation document) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

   Costs and benefits that must be considered for option 1 include:

   <u>Costs</u>

   - The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.

- 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.

- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:

- The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market

- The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8. **Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data. [Comment box, plus opportunity to provide attachments]**

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for Options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent proposal in Australia and New Zealand 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 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 almost 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand’s food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken

by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and dietary linked non-communicable diseases (including heart disease and cancer) in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9. **What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?**

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

Key risks to consumers and to public health in retaining the status quo are:

- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

- These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

- The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy

products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.

- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.2 'Impacts of Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose' (pages 74 to 103) of the draft Regulatory Impact Statement before answering the questions below.

10. **Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

    NEGATIVE

    ARPHS does not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.

    The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

    ARPHS is concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

ARPHS discusses specific components in turn:

Objects and factors to which FSANZ must have regard

1. Clarification of definition of public health

ARPHS agrees that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. ARPHS supports the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

ARPHS strongly opposes this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary. The draft RIS itself notes that the status quo (which does not include trade as a core objective) "has delivered good trade outcomes over many years". This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '.... adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often

cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

ARPHS supports the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

ARPHS supports the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on Māori, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for Māori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for Māori and Pacific populations in NZ and high burden on the health system. Priority groups such as Māori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular Māori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect Māori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to Māori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with Māori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with Māori on

this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

ARPHS strongly opposes the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

6. Further changes to s18 – and role of FSANZ

ARPHS notes that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. ARPHS does not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

<u>FSANZ functions</u>

ARPHS support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (page 15), this role should remain in the Food Ministers' hands.

ARPHS does not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In ARPHS's view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

<u>Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure</u>

ARPHS supports establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

<u>Costs and benefits of Component 1</u>

ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12. **If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).**

ARPHS supports a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

14. **How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?**

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for Māori

and Pacific populations who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for Māori and Pacific populations and high burden on the health system. Priority groups such as Māori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular Māori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect Māori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to Māori. The Auckand Regional Public Health Services (ARPHS) is concerned that the current proposals have not been consulted on with Māori, and do not appear to consider equity or Te Tiriti o Waitangi obligations. ARPHS considers that the Government must reconsider the consultation and engagement with Māori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

16. **Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

NEGATIVE

ARPHS does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.

ARPHS supports an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, ARPHS supports some

elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. ARPHS does not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

ARPHS agrees that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, ARPHS does not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

ARPHS supports the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals

In theory, ARPHS supports the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. ARPHS notes the proposed risk framework in the RIS (Table 5) and make the following comments:

- Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
- While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time
- ARPHS does not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

ARPHS agrees that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting

ARPHS do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

ARPHS considers it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

ARPHS does not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (page 36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (page 37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks

ARPHS strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

ARPHS notes that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will '*….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators*.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions

(rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

ARPHS strongly opposes the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways

ARPHS strongly opposes the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

ARPHS strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. ARPHS notes the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

ARPHS knows from New Zealand experience with health claims that self-substantiation is not effective, and does not support its expansion.

17. **Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?**

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding another route that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18. **What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?**

ARPHS does not think codes of practice and guidelines should replace food standards. ARPHS considers that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

20. **Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?**

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21. **Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

NEGATIVE

ARPHS strongly opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

ARPHS notes the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear why a policy

proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

ARPHS is also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. ARPHS does not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

ARPHS does not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22. **What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?**

ARPHS does not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23. **Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

NEGATIVE

Overall ARPHS does not support this component. ARPHS does not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

24. **Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?**

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be avoided, FSANZ's existing functions must be resourced as a priority.

25. **Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

NEGATIVE

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

26. **Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?**

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27. **Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

NEGATIVE

ARPHS would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

Changing FSANZ Board arrangements

ARPHS does not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. ARPHS does not support any increase in industry representation on the Board, and ARPHS recommends industry representation be reduced to one member.

ARPHS recommends retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. ARPHS does not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. ARPHS also does not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

Investment into business solutions

ARPHS supports an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

ARPHS understands the RIS notes it is outside the scope of the review, however ARPHS is concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work

ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (page 36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (page 37). ARPHS recommends the introduction of a public health pathway to request reforms to the food regulatory system.

28. **What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?**

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual New Zealand consumers and on New Zealand’s health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29. **Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?**

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits

where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
- 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
- The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

<u>Costs and benefits of Component 1</u>

ARPHS does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As ARPHS highlighted previously, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30. **Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data. [Comment box, plus opportunity to provide attachments]**

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

There is New Zealand 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 RIS of the impact of the proposed reforms on public health outcomes.

It is known that many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. The contribution that a poor diet and overweight and obesity make to the burden of disease in New Zealand is also known.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS 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 New Zealand as $8.6 billion in direct and indirect costs (PWC report reference). 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.

31. **Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?**

    The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

    If additional cost-recovery mechanisms are introduced, ARPHS is concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS acknowledges that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

    ARPHS strongly recommends that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. ARPHS also recommends the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32. **What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?**

    This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are

currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33. **How often do you currently engage with the food regulation system through making applications to change food standards?**

ARPHS does not engage with the system by requesting applications to change food standards. This is because the current system is biased towards industry interests and there is no clear pathway designed for public health organisations to request review and amendment of food standards as a whole, taking into account the effect of food supply in its entirety on public health.

ARPHS engages with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that require significant resources to engage and advocate for change. It is very often difficult for PH organisations to have sufficient resource to prioritise this engagement in a timely manner. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34. **What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?**

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for

consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35. **Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?**

    No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

    The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.3 'Impacts of Option 3: Build on FSANZ's role to reinforce the bi-national nature of the join food standards system' (pages 104 to 120) of the draft Regulatory Impact Statement before answering the questions below.

36. **Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]**

    NEGATIVE

    Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

ARPHS is concerned that Option 3 is not aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

38. Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

ARPHS does not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]

NEGATIVE

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards
ARPHS supports FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst ARPHS supports independent industry guidelines developed by FSANZ ARPHS does not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

ARPHS does not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine
ARPHS is not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40. Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

41. Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]

NEGATIVE

ARPHS does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be

too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42. Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]

NEGATIVE

The draft RIS is unclear as to what legislative changes are intended to implement this component 4**.** ARPHS does not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. ARPHS does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

43. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

44. What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

ARPHS does not support the prioritisation of paid industry applications ahead of public health proposals. ARPHS does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the

overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. ARPHS does, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (page 36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (page 37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

45. Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealands. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
- Set statutory timeframes for proposals.
- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
- Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

46. Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Option 2

None. ARPHS does not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of the components of Option 2 that could be implemented, ARPHS does not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3

None. ARPHS does not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

ARPHS consider the priorities for the FSANZ Act review should be:

1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)

2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability

3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

Please read the draft Regulatory Impact Statement and the draft Aspirations for the Food Regulatory System before answering the questions below.

The FSANZ Act Review is an element of the ambitious plan to reform the Bi-national Food Regulation System, which also consists of three other projects (see the Food Regulation website for further information). These projects are being progressed in parallel to develop a new, best practice regulatory, legislative and operational basis for the system.

As part of the Review of the Food Regulation Agreement project, draft Aspirations for the Food Regulation System have been developed. For this FSANZ Act Review consultation, stakeholders are also being asked to consider how the reform options for the FSANZ Act align with the draft Aspirations for the Food Regulatory System.

47. **Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?**

    No. The aspirations are very public health focused and the options presented will not enable the aspirations to be met. None of the options address the current issue of application timeframes and the prioritisation of these over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives (all public health asks in the consultation).

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-05-31 15:03:14**

About you

What is your name?

Name:
Gohar Yazdabadi

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Beverages

What is your organisation?

Organisation:
Alcohol Beverages Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Alcohol Beverages Australia (ABA) is the pan-industry body representing the many award-winning beer, wine, and spirit producers, distributors and retailers that operate legally and responsibly across Australia. Our role is to ensure that regulations are balanced so there is stability and certainty in the market to drive investment, while acknowledging and working with all stakeholders to minimise the harms associated with alcohol misuse. ABA advocates for evidence-based regulation and policies which target specific at-risk groups as the most effective way of changing behaviour associated with alcohol harm.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The proposal to introduce a new objective around food sustainability into FSANZ's remit will further increase that complexity and increase duplication into government.
This is prima facie not the role of a food agency responsibility for ensuring food safety and the prevention of acute food borne illness. The responsibilities fall largely under the administration of the Department of Agriculture, Water and the Environment (DAWE) and their State / Territory equivalents, and no evidence is provided to explain why these Departments are not carrying out these functions efficiently and effectively at present. The RIS is silent on removing these responsibilities from DAWE, so presumably such a proposal would further complicate the regulatory burden for industry by duplicating these responsibilities across multiple agencies and portfolios, and will significantly drive up costs. This would undermine the objectives of the ToRs to ensure changes to the FSANZ Act would promote an efficient and internationally competitive food industry.

Please see attached submission for further details and recommendations.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The only case for when the lens of public health and sustainability can be considered is after first satisfying that the issue relates to the primary purpose of FSANZ which is food safety.

Please see attached submission for further details and recommendations.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

ABA opposes any delegation of decision-making powers from Ministers to officials. Ministers are in a unique position to be able to make decision regarding policy positions that impact the lives of Australians. This is because Ministers have been elected by the Australian public for the purpose of representing their interests. Ministers are also able to bring a whole of government approach to policy decision meaning they are best placed to make decisions that will minimise unintended consequences of policy implementations.

Given that the work of FSANZ focuses on the protection of Australians through food safety, it is clear that decision making relating to this work should remain with Ministers to ensure the highest consumer safety.

Please see attached submission for further details and recommendations.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

From industry experience the Ministerial decision-making aspect is least burdensome to both industry and internally to FSANZ. Instead, it is important to ensure that those elected to enact public policy are at the forefront of decision making related to those policies. In order to consider efficiencies in the FSANZ system, the focus should be made on those areas that represent actual inefficiencies within the food regulatory system

Please see attached submission for further details and recommendations.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

ABA supports the use of other regulatory instruments to assist in meeting the objectives of the Authority, particularly around the provision to ensure adequate information to consumers to make informed choices. The use of non-binding guidelines to provide advice to industry on meeting obligations would be useful to both industry and enforcement agencies, and in particularly should be written with small business in mind who may not have the resources or expertise to interpret new or amended food standards or how best to implement them. Developing these guidelines as part of the process in ensuring that regulatory solutions are of least impact to industry and small business, as per our recommendation four, could create useful synergies.

The existing user guides are rather simplistic and don't presently provide significant guidance to industry. A system similar to the ATO's Taxpayer Ruling system could be an option which if translated to food safety would ensure industry as the regulated entity is on safe ground and avoid prosecution from state authorities by relying on a 'ruling' for technical issues, but still have the ability to challenge the matter if they disagree with an interpretation. A similar system could be implemented, noting that FSANZ does not and should not have enforcement powers.

We also 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.

Please see attached submission for further details and recommendations.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

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. ABA 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, ABA 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.

Please see attached submission for further details and recommendations.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

ABA notes that the draft RIS has elected not to make recommendations about new cost-recovery mechanisms for industry-initiated work, but that a separate targeted review on funding arrangements may be warranted, potentially to include whether a contribution by state and territory governments is justified.

Please see attached submission for further details and recommendations.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

ABA believes there is scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

There are elements of the Draft RIS that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission
focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

Please see attached submission for further details and recommendations.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

There are elements of the Draft RIS proposed Option 2 and 3 that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options.

Please see attached submission for further details and recommendations.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The Terms of Reference for the review focussed on:
• the effectiveness and efficiency of regulation,
• consistency with best practice regulation and standard setting, and
• the promotion of an efficient and internationally competitive food industry

With such excellent Terms, we believed that there was scope for sensible, evidence-based changes to the FSANZ Act in order to modernise the Australian and New Zealand approach to food safety.

The Food Regulation Secretariat (within the Department of Health), instead undertook a consultation process that ignored industry submissions and recommends FSANZ role be significantly expanded.

The draft Aspirations documents highlights the significant disconnect between the Terms of Reference and what the DoH chose to explore in its consultation process.

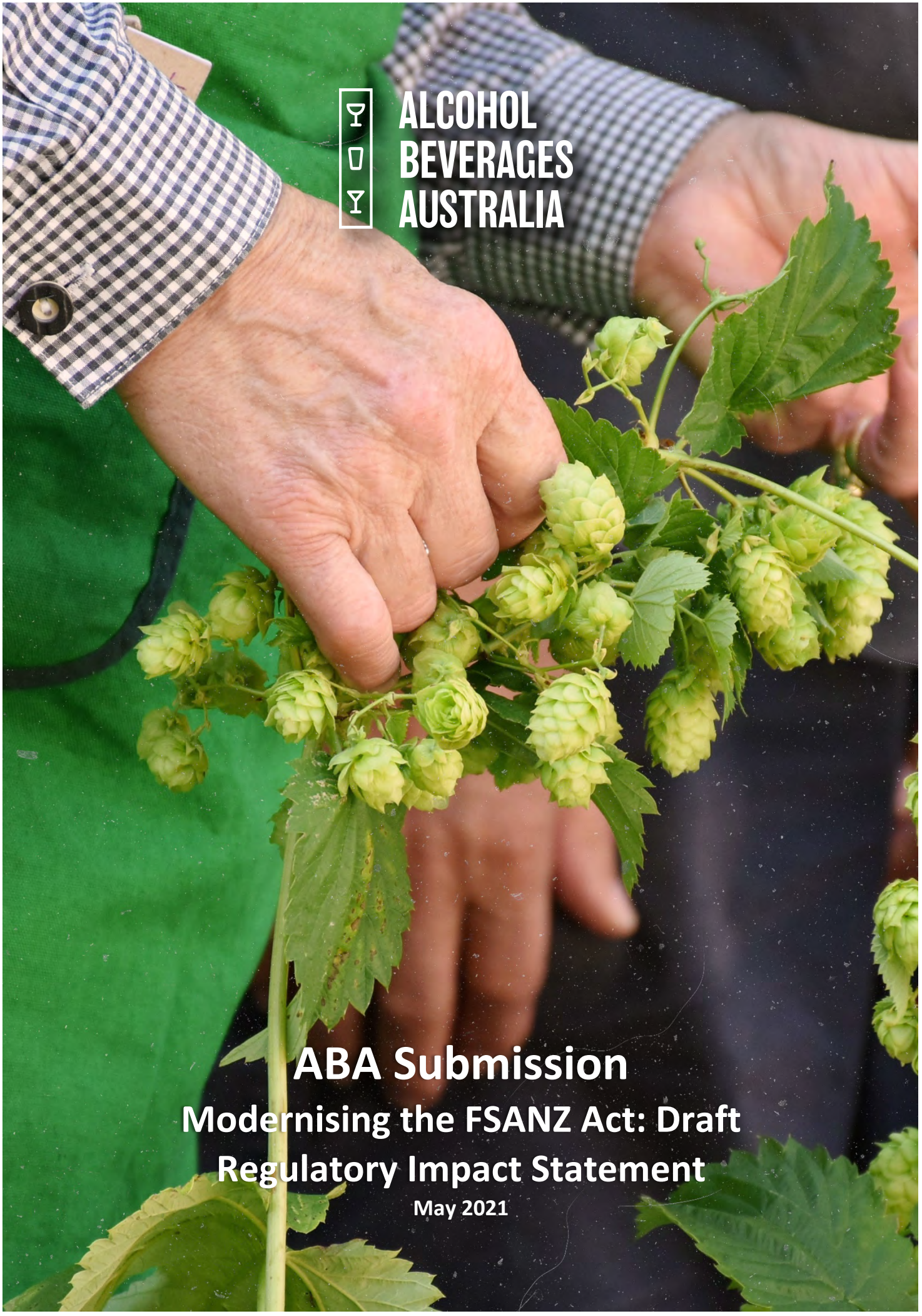
As such, the Draft RIS does reflect the Aspirations document - and as such, ABA is not in a position to endorse or support either document as they reflect such a significant derailing of process. Major surgery is required to both the Aspirations document and the Draft RIS to ensure any modifications to the FSANZ Act make it agile, resilient and fit for purpose - and most importantly deliver on the goals set out in the Terms of Reference.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
ABA Draft RIS Submission V4 - final draft.pdf was uploaded



ABA Submission

Modernising the FSANZ Act: Draft Regulatory Impact Statement

May 2021

Contents

Prepared by:

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Executive Summary

Alcohol Beverages Australia (ABA) welcomes the review into the Food Standards Australia New Zealand (FSANZ) Act, and its Terms of Reference (ToR) which explicitly recognised the importance of the food industry to regional communities and the broader economies of Australia and New Zealand.

There are elements of the Draft RIS proposed Option 2 and 3 that warrant inclusion in FSANZ reform, but other elements require such significant change or reflect missed opportunities that means ABA is not in a position to endorse any of the present Options. Instead, our submission focuses on amendments we can support in full or that require further fine tuning; amendments we reject; and additional amendments that we believe should be included to modify the FSANZ Act to make it agile, resilient and fit for purpose.

ABA believes there is scope for 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 in the draft RIS that represent an overreach as to the role, responsibility and functioning of a food safety authority such as FSANZ.

ABA submits that the three most pertinent areas that should be removed from the final RIS are:

1. FSANZ expansion into preventative and public health
2. FSANZ expansion into farm and food sustainability
3. Removal of Ministerial decision-making powers

ABA opposes the attempt in the RIS to redefine FSANZ's responsibilities away from its original intention of food safety to include both wide-raging preventative health as well as regulating matters of farm and food sustainability. The focus of FSANZ's work should remain on ensuring that all stakeholders have confidence in the safety and quality of food and the Australian and New Zealand food industry, and that a reputation is created that will translate into both domestic and export success.

1. <u>FSANZ expansion into preventative and public health</u>

The draft RIS proposes the following issue:

> "There is currently ambiguity around FSANZ's broader role in achieving public health, nutrition, and safety objectives beyond acute food safety issues, such as promoting

> healthy eating and protecting Australians and New Zealanders from diet-related diseases…."[1]

The draft RIS then goes on to propose the following definition of 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."[2]

As such the draft RIS is proposing to expand FSANZ's role to that of a directive-setting preventative health agency. This expanded remit would give FSANZ power to - for example - impose mandatory reformulation of food composition or processing, not for reasons of preventing acute disease, but to address issues like obesity, chronic non-communicable disease. **This will only increase the regulatory burden for industry, while increasing cost and reducing choice for consumers, including in export markets.** It goes well beyond ensuring consumers can make informed choices for themselves about their diet and nutritional needs.

2. <u>FSANZ expansion into farm and food sustainability</u>

The draft RIS suggests a remit for FSANZ into sustainability so far reaching as to include:

> "agricultural practices, food processing, distribution, packaging, and other activities in the food supply […] on climate change, biodiversity, soils and waterways… [including] levels of greenhouse gas emissions from livestock, inappropriate aquaculture practices and excessive plastic packaging" [3]

As FSANZ is an agency with primary responsibility for food safety it is not appropriate for its remit to be expanded to areas that have not relevance to its core work such farm and food sustainability including climate change. This is particularly so given that the topics of climate change, biodiversity, greenhouse emissions etc are vigorously considered by a myriad of government agencies, such as the Climate Change Authority and the Australian Renewable Energy Agency.

The draft RIS attempts to justify this expanded role by relying on incorrect portrayal of industry's genuine commitments to sustainability and in particular states:

> *"…industry can make unregulated claims regarding the environmental sustainability of a product*".[4]

[1] Nous Group, 2021. Modernising the FSANZ Act. Pg 29.
[2] Nous Group, 2021. Modernising the FSANZ Act. Pg 52.
[3] Nous Group, 2021. Modernising the FSANZ Act. Pg 26.
[4] Nous Group, 2021. Modernising the FSANZ Act. Pg 27.

The draft RIS incorrectly suggests that food sustainability is an opportunity for the food industry to be deceptive and that the industry operates in a void of regulation, despite false and misleading claims regarding environmental sustainability being regulated by both federal, state and territory competition and fair trading agencies.

There is clearly no case or justification for FSANZ to expand its remit into either preventative health or farm and food sustainability. The only case for when the lens of public health and sustainability can be considered is after first satisfying that the issue relates to the primary purpose of FSANZ which is food safety. This will remove all ambiguity and ensure a meaningful and appropriate work load for FSANZ.

3. Removal of Ministerial decision-making powers

ABA also opposed any delegation of decision-making powers from Ministers to officials. Ministers are in a unique position to be able to make decision regarding policy positions that impact the lives of Australians. This is because Ministers have been elected by the Australian public for the purpose of representing their interests. Ministers are also able to bring a whole of government approach to policy decision making meaning they are best placed to make decisions that will minimise unintended consequences of policy implementations.

Given that the work of FSANZ focuses on the protection of Australians through food safety, it is clear that decision making relating to this work should remain with Ministers to ensure the highest consumer safety.

The Draft RIS portrays the inefficiencies of the food regulation system as being effectively addressed by the movement of decision-making powers away from Ministers to officials.

There is, however, no evidence to suggest that the inefficiencies within the FSANZ system come from Ministerial decision making. From industry experience the Ministerial decision-making aspect is least burdensome to both industry and internally to FSANZ. Instead, it is important to ensure that those elected to enact public policy are at the forefront of decision making related to those policies. In order to consider efficiencies in the FSANZ system, the focus should be made on those areas that represent actual inefficiencies within the food regulatory system.

4. Opportunities

ABA reiterates that we welcome the review of the FSANZ Act with the view of modernisation in a way that creates a sensible remit for FSANZ in producing an agile food safety agency.

To this regard, the Terms of Reference provide guidance for two additional amendments to the Act.

A focus on trade and international competitiveness is a key principle that should be enshrined in legislation and help guide FSANZ processes and decisions and align with Codex. Equally the draft RIS proposes a new s 18 factor FSANZ should have regard to in developing regulatory measures, i.e. "the regulatory impact on industry, particularly small business." A**BA believes this recommendation should go further, by adding that any new or amended regulatory measure should be the least burden for business necessary to achieve its objectives.**

We look forward to welcoming a final RIS that delivers on the Terms of Reference and addresses the serious concerns outlined in our submission.

ALCOHOL BEVERAGES AUSTRALIA

Supports

the modernisation of the food safety regulation system to be agile and responsive in protecting our reputation

Believes

food safety must remain the core of FSANZ's scope

Consumer Benefits

1. Agile food system means more innovation and consumer choice
2. Consumers can have a high level of confidence in food safety
3. Food and beverages remain affordable for consumers

ALCOHOL BEVERAGES AUSTRALIA

Does Not Support:

The expansion of FSANZ into **public or preventative health**

Delegation of Ministerial decision making to officials

The expansion of FSANZ into **farm and food sustainability**

Detrimental for Consumers

1. Flow on to consumers of increased costs to business
2. Bans or restrictions on food types, convenient packaging & retail displays
3. Sugar, fast food and other taxes / levies

Recommendations

Recommendation one: The only case for when the lens of public health can be considered is after first satisfying that the issue relates to the primary purpose of FSANZ which is food safety. This will remove all ambiguity and ensure a meaningful and appropriate work load for FSANZ officials. This should be achieved by amending section 18 to require *that the regulatory measure relates directly to a food safety issue.* See recommended wording of section 18(2) incorporated under recommendation six.

Recommendation two: That "an efficient and internationally competitive food industry" be included as a s 3 objective of the Authority.

Recommendation three: That an additional provision be included in s 18 (1) that FSANZ must have regard to in food regulation, namely that "the regulatory solution is of least burden to industry, particularly small business, needed to achieve regulatory objectives."

Recommendation four: There is no legislative amendment which will encumber the ability of the Food Ministers' Meeting to request a review of a FSANZ proposal, including the proposal to harmonise the criteria under the Food Regulation Agreement with s 18 of the FSANZ Act.

Recommendation five: There is no legislative amendment to include objectives of food sustainability.

Recommendation six: Recommendation six: The order of priorities for s 3 and s 18 of the Act be amended (as per underlined passages) to read:

S 3 | Object of Act

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals (in descending priority order):

a) *a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand*
b) *an efficient and internationally competitive food industry*
c) *an effective, transparent and accountable regulatory framework within which the food industry can work efficiently*
d) *the provision of adequate information relating to food to enable consumers to make informed choices*

e) *the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.*

S 18 | Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures

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 human life through the provision of safe foods for consumption*
b) *the protection of public health and safety*
c) *the regulatory solution is of least burden to industry, particularly small business, needed to achieve regulatory objectives*
d) *the provision of adequate information relating to food to enable consumers to make informed choices*
e) *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) *that the regulatory measure relates directly to a food safety issue*[5]
b) *the need for standards to be based on risk analysis using the best available scientific evidence*
c) *the promotion of consistency between domestic international food standards*
d) *the desirability of an efficient and internationally competitive food industry*
e) *the promotion of fair trading in food*
f) *any written policy guidelines formulated by the Forum on Food Regulation for the purposes of this paragraph and notified to the Authority.*

Recommendation seven: That the FSANZ Board engages process flow experts who in partnership with industry can make recommendations that improve the FSANZ application process to one that focuses on growth and continuous improvement through process optimisation.

Recommendation eight: 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.

[5] The insertion of this section relates to recommendation one.

Recommendation nine: In consultation with stakeholders, FSANZ develops a risk framework that would allow low-risk applications and proposals to undertake an expedited process for approval.

Recommendation ten: That should FSANZ pursue an expedited process for the adoption of risk assessments or new or amended standards from international authorities or comparable food safety regulators, that such processes should only be used in an application instigated by industry or with the agreement of industry as the regulated entity, and with a mechanism that would allow a regulated entity to request ministerial review of a proposed amendment.

Recommendation eleven: The Administrative Orders are amended to move responsibility of the *Food Standards Australia and New Zealand Act* to the Minister for Agriculture.

Recommendation twelve: That the final composition of the FSANZ Board after any streamlining ensures that there is adequate representation of Board members with industry experience to ensure a detailed understanding of the costs and impact of regulatory solutions proposed.

Recommendation thirteen: That FSANZ's statutory functions be amended to allow FSANZ to coordinate action to respond to food incidents and food recalls on its own initiative.

Recommendation fourteen: There is no legislative amendment to give FSANZ an enforcement function.

Recommendation fifteen: That decisions of the Food Ministers' Meeting are taken through consensus, reflecting the reforms announced in the recent Review of COAG Councils and Ministerial Forums.

Recommendation sixteen: The role of the Food Regulation Standing Committee be reviewed in conjunction with the principles of the Review of COAG Councils and Ministerial Forums, with a view to re-assigning its functions and abolishing this layer of administration.

About Alcohol Beverages Australia

Alcohol Beverages Australia (ABA) is the pan-industry body representing the many award-winning beer, wine, and spirit producers, distributors and retailers that operate legally and responsibly across Australia. Our role is to ensure that regulations are balanced so there is stability and certainty in the market to drive investment, while acknowledging and working with all stakeholders to minimise the harms associated with alcohol misuse. ABA advocates for evidence-based regulation and policies which target specific at-risk groups as the most effective way of changing behaviour associated with alcohol harm.

The alcohol industry in Australia is a complete value chain encompassing farming, manufacturing, supply chain operators, wholesalers, tourism operators, retailers and food and beverage businesses. Australian produced alcoholic beverages are served across the world and are synonymous with high quality and safety. While serving 16 million adult consumers across Australia, the alcohol industry adds $52 billion in economic value[6]. This includes[7]:

- $9.3 billion in taxes (including excise, WET and GST)
- $3.6 billion in exports
- $465 million in capital expenditure
- $29.2 billion in tourist spend on food and drink

[6] Alcohol Beverages Australia, 2020. 2030 Vision for the alcohol Beverages Industry. Pg. 12
[7] Alcohol Beverages Australia, 2020. 2030 Vision for the alcohol Beverages Industry. Pg. 12

Introduction

The opening paragraph of the Executive Summary of the draft Regulatory Impact Statement (RIS) into Modernising the Food Safety Australia New Zealand (FSANZ) Act notes that Australians and New Zealanders have confidence in the quality and safety of the food they eat. It is important to recognise that consumers must also have confidence in the certainty of an affordable food supply – a certainty that has been challenged in other parts of the world due to COVID19, but one which has remained robust in both Australia and New Zealand. These elements – quality, safety, affordability and certainty – rely not just on a strong, efficient and agile food standards system, but on a profitable, innovative and consumer-centric food and beverage industry. Its success and financial sustainability are essential both to the supply of safe and affordable food, but also as a key economic driver for both countries.

To ensure that the food industry remains profitable, the food safety regulator, FSANZ, must be responsive to the changing needs of the industry as it in turn adapts and responds to the changing needs of its customers. The food industry is the regulated entity. We are all consumers, and everyone benefits from first-rate, affordable and safe food; but it is the industry which is ultimately responsible for delivering it. It is the reputation of the industry that FSANZ is designed to protect through efficient and targeted regulation. The reputation of the food industry is not only paramount domestically, but also internationally, given that according to the Australian Food and Grocery Council, food and beverage exports were valued at more than $38.3 billion in the last financial year[8].

The original Terms of Reference (ToRs) into the review of the FSANZ Act, while quite broad, did emphasise some key principles. Its opening paragraph mandated consideration of "the economic efficiency of regulation, recognising the importance of the food industry…". It included consideration of the FSANZ assessment process to ensure it is "fit for purpose and outcomes based and promotes an efficient and internationally competitive food industry." It also mandated that "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 business." This includes ensuring both FSANZ operations and its substantive regulatory decisions impose the least burden on business to achieve objectives.

As such, FSANZ's structure, operations and governance should be designed to ensure it is equipped to undertake its statutory remit without compromising the ongoing development of a competitive, responsible and efficient food industry. Any changes proposed by the RIS should be looked through this lens: to ensure consumers are confident in the safety of the

[8] Australian Food and Grocery Council, 2019. State of the Industry 2019 Report.

food supply, have adequate information to make informed choices, while maintaining a profitable industry that can keep food affordable.

Among the proposals in the RIS, there are some measures to improve the efficiency of the interface between industry and FSANZ, and some to reduce administrative practices and improve the regulator's productivity by taking a risk-based approach to decision-making. We support these efforts, sometimes with adjustments, and note these efficiencies will benefit all stakeholders over time. However, we oppose many parts of the RIS which stray far away from the ToR, including the significant expansion of its remit away from its food safety focus. As such, we will not be supporting Option 1, 2 or 3 at this time, until we have a better understanding of the final draft and whether the recommendations in our submission are addressed.

The Objectives and Functions of FSANZ

The draft RIS states, "The objectives and current functions of FSANZ are not clear"[9], and there is consideration of proposals to amend the FSANZ Act at s 3 (Object of the Act) and s 18 (Objectives of the Authority in developing or reviewing food regulatory measures).

S 3 | Object of Act

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:

a. *a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand*
b. *an effective, transparent and accountable regulatory framework within which the food industry can work efficiently*
c. *the provision of adequate information relating to food to enable consumers to make informed choices*
d. *the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.*

S 18 | Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures

[9] Nous Group, 2021. Modernising the FSANZ Act. Pg 25.

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*
    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*
    b. *the promotion of consistency between domestic international food standards*
    c. *the desirability of an efficient and internationally competitive food industry*
    d. *the promotion of fair trading in food*
    e. *any written policy guidelines formulated by the Forum on Food Regulation for the purposes of this paragraph and notified to the Authority.*

A number of proposals for changes to the objectives are made:

A. <u>Public Health Protection</u>

It is uncontroversial that FSANZ's primary responsibility is to protect consumer health through addressing food quality and safety in preventing food borne illness and acute disease. At the time the FSANZ Act was passed, it was considered appropriate for FSANZ to regulate the food industry in matters relating to public health as it was then understood, i.e. to promote population health as it related to the goals articulated in s 3 of the Act. An example of this would be its regulations around mandatory fortification, where food manufacturers are required to add certain vitamins or minerals to specified foods. For example, FSANZ has regulated that manufacturers must add vitamin D to edible oil spreads; and thiamine and folic acid to wheat flour used for making bread. FSANZ advises that folate is essential for healthy growth and development, and there is a benefit to population health in mandatory fortification regulations.

Mandatory fortification is not a food safety issue and is not related to acute, post-consumption harms, as the absence of the added vitamins or minerals in the food does not make the food unsafe for consumption. In Australia, this fortification decision was interpreted under the broader remit of public health and safety. It is worth noting that in New Zealand, these types of measures are the responsibility of the Ministry of Primary

Industry, not the Ministry of Health[10] and as such were interpreted with a narrower lens and not mandated but made voluntary.

This interpretation of the FSANZ Act in Australia is at its heart why the Draft RIS suggests FSANZ objectives are not clear. It creates an inherent conflict between competing Objectives on food safety and "public health". This conflict has only grown greater over the passage of time with the concept of public health evolving over the last 30 years. As FSANZ is administered under the Department of Health, some stakeholders now interpret this Objective with 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.

We do not believe the legislation should be amended to ratify this expanded perspective of public health. An ordinary reading of public health and safety would be to interpret the remit as aligning to the goals currently articulated in s 3 of the Act, that is, around the quality and safety of food, and the provision of adequate information to enable consumers to make informed choices.

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,
- it duplicates the work of other government agencies, including at the state and territory level.

Should FSANZ be empowered to consider all aspects of food consumption including that which could adversely affect long term health through diet-related non-communicable disease and chronic illness, it would move beyond its current remit of ensuring consumers have access to adequate information to make informed choices, and will have a new ability to regulate food that is otherwise safe for consumption and meeting the needs and expectations of consumers to also encompass its composition, processing, packaging, sale, marketing and distribution for the purpose of "shaping population dietary and consumption trends[11]."

One such example of these new powers would allow FSANZ to prescribe mandatory reformulation of food manufacture and the setting of nutrient reformulation targets,

[10] Ministry for Primary Industries (2020) *Food Safety Regulatory System* <https://www.mpi.govt.nz/dmsdocument/34731-Food-Safety-System-pdf-with-logos>
[11] Nous Group, 2021. Modernising the FSANZ Act. Pg3

irrespective of consumer demand. If the Government expands the scope of FSANZ's remit into preventive health and obesity, it will move the dial and have the regulator policing individual's food choices by reformulating its contents.

This is not a strategy that will lead to an internationally competitive food industry as it ignores consumer preferences and the concept of informed choice. Additionally, we note that food safety legislation of comparable countries, such as Canada, the United States, the United Kingdom and Japan, does not include objectives for their respective food safety standards systems around long-term public health or diet-related chronic disease. The focus of these countries' standards remains on the management and prevention of food borne illness and the prevention of acute harms.

ABA does not support changing the wording in s 3 or s 18 of the Act to broaden the scope of public health. 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. Only when this threshold question has been adequately answered should FSANZ have consideration for matters of public health. The broader remit around the promotion of healthy eating, diet and exercise is already actioned by education, health departments and preventive health agencies, including at the state and territory level.

Instead of expanding the definition of public health as the draft RIS proposes, the final RIS should seek to tighten the definition and remove any ambiguity of FSANZ core role. This will create significant efficiencies as FSANZ will only be tasked to consider matters that must first pass a 'food safety' test.

Recommendation one: The only case for when the lens of public health can be considered is after first satisfying that the issue relates to the primary purpose of FSANZ which is food safety. This will remove all ambiguity and ensure a meaningful and appropriate work load for FSANZ officials. This should be achieved by amending section 18 to require *that the regulatory measure relates directly to a food safety issue.* See recommended wording of section 18(2) incorporated under recommendation six.

B. Trade and an efficient and internationally competitive food industry

Through the terms of reference the Government has clearly recognised the importance of an efficient and internationally competitive food industry, and its need to be export focused

as a key driver of the Australian economy. It makes sense for this objective to be explicitly articulated as a core goal for FSANZ in the legislation.

This would align the objectives of FSANZ with Codex. The Codex Alimentarius is the collection of internationally adopted food standards and related texts presented in a uniform manner. These standards aim at protecting consumers' health and ensuring fair practices in the food trade. The publication of the Codex Alimentarius is intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonisation and in doing so to facilitate international trade. Given the draft RIS later considers whether FSANZ should have the power to automatically adopt or consider Codex standards, there is great logic in adding trade to the objectives of the Authority in the Act.

The draft RIS also proposes a new s 18 factor FSANZ should have regard to in developing regulatory measures, i.e. "the regulatory impact on industry, particularly small business." ABA believes this recommendation should go further, by adding that any new or amended regulatory measure should be the least burden for business necessary to achieve its objectives. This is consistent with the ToRs and with the aim of promoting an internationally competitive food industry. It would strengthen the relationship between FSANZ and industry with confidence that the costs of regulatory imposts have been fully considered, and alternatives calculated to ensure no excessive burden is necessary to ensure food safety or informed choice.

ABA notes that regulatory solutions proposed by FSANZ may reflect antiquated behaviours of either industry or consumers, and that the adoption of new technologies or practices may provide better alternatives for FSANZ to achieve its objectives. A clear example is around how consumers obtain information about food selection. When the FSANZ Act was passed, few consumers would have been aware of digital technology, with the internet still being used only by specialists, and the myriad of digital and social tools now used by consumers yet to become available. Imparting information to consumers was primarily done through the printed label, given the lack of alternatives outside of expensive advertising campaigns, which would have been impractical in all but the most exigent of circumstances.

Fast forward to 2021, and consumers have unlimited information about unlimited subject matter in the palm of their hands, usually via smart phones. Consumers use Siri, Alexa, or Google to ask questions and receive answers. There are apps about nutrition, diet, weight loss, healthy recipes and novel foods. Many of these apps have information about the energy content, nutritional information and ingredients of food already imbedded, allowing consumers to access them to make informed choices about their diet, instead of using

printed labels. The draft RIS noted that FSANZ could potentially consider the broader use of technology when stipulating labelling requirements in food standards[12].

Recommendation two: That "an efficient and internationally competitive food industry" be included as a s 3 objective of the Authority.

Recommendation three: That an additional provision be included in s 18 (1) that FSANZ must have regard to in food regulation, namely that "the regulatory solution is of least burden to industry, particularly small business, needed to achieve regulatory objectives."

C. Criteria for ministers to request a review of a draft regulatory measure

The draft RIS notes that under current practice, Food Ministers can reject a regulatory measure by registering their concerns, based on criteria (not in the Act, but in the Food Regulation Agreement) which is different to the criteria FSANZ must consider as contained in the Act. The draft RIS proposes amending the Act to legislate criteria that Food Ministers must meet to request a review, and that this criteria should be harmonised with the criteria set for FSANZ in s 18 of the Act. ABA does not support this proposal.

ABA notes that it is the role of Ministers to bring a whole of government perspective to decision-making, and that Ministers will and should have regard to the broader implications of regulatory proposals that are beyond the remit of FSANZ. The legislation should not encumber that ministerial perspective. Issues around bureaucratic bottlenecks, particularly for low-risk decisions, can be addressed elsewhere (see the section on Risk-based Decision-making), but we should not have a situation where Ministers are unable to request a review given they are ultimately accountable for the food standards system.

Recommendation four: There is no legislative amendment which will encumber the ability of the Food Ministers' Meeting to request a review of a FSANZ proposal, including the proposal to harmonise the criteria under the Food Regulation Agreement with s 18 of the FSANZ Act.

D. Food Sustainability

The draft RIS notes that food businesses must comply with multiple regulatory schemes, and that there is a web of interconnected agencies that have responsibility for food. The proposal to introduce a new objective around food sustainability into FSANZ's remit will further increase that complexity and increase duplication into the bureaucracy. The draft RIS proposes the inclusion of a new objective for FSANZ under the term food sustainability, with potentially quite an expansive interpretation to include environmental sustainability,

[12] Nous Group, 2021. Modernising the FSANZ Act. Pg 64.

agricultural practices, packaging, climate change, biodiversity, aquaculture, soils and waterways. This is *prima facie* not the role of a food agency responsibility for ensuring food safety and the prevention of acute food borne illness. The responsibilities fall largely under the administration of the Department of Agriculture, Water and the Environment (DAWE) and their State / Territory equivalents, and no evidence is provided to explain why these Departments are not carrying out these functions efficiently and effectively at present. The draft RIS is silent on removing these responsibilities from DAWE, so presumably such a proposal would further complicate the regulatory burden for industry by duplicating these responsibilities across multiple agencies and portfolios, and will significantly drive up costs. This would thoroughly undermine the objectives of the ToRs to ensure changes to the FSANZ Act would promote an efficient and internationally competitive food industry.

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 final RIS.

Recommendation five: There is no legislative amendment to include objectives of food sustainability.

E. <u>Prioritisation of objectives under the Act</u>

Under the current wording of the Act, the s 3 goals for FSANZ are noted, without any particular priority; in contrast, s 18(1) objectives that FSANZ uses to develop regulatory measures are listed in priority order, with additional measures list in s 18(2) in no particular order. ABA believes there are strong grounds for a common approach between the two sections, and recommends both reflect an order of priority. This would be consistent with current food standards operations, for example, as reflected in the Overarching Strategic Statement for the Food Regulatory System, which prioritises food safety and direct, acute and immediate threats to health about all else.

As our earlier submissions make clear, this would also remove the ambiguity and lack of role clarity concerning "public health" by having FSANZ first regard to food safety.

Recommendation six: The order of priorities for s 3 and s 18 of the Act be amended (<u>as per underlined passages</u>) to read:

S 3 | Object of Act

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals (<u>in descending priority order</u>):

a) a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
b) an efficient and internationally competitive food industry
c) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
d) the provision of adequate information relating to food to enable consumers to make informed choices
e) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.

S 18 | Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures

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) <u>The protection of human life through the provision of safe foods for consumption</u>
b) the protection of public health and safety
c) <u>the regulatory solution is of least burden to industry, particularly small business, needed to achieve regulatory objectives</u>
d) the provision of adequate information relating to food to enable consumers to make informed choices
e) 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) <u>that the regulatory measure relates directly to a food safety issue</u>[13]
b) the need for standards to be based on risk analysis using the best available scientific evidence
c) the promotion of consistency between domestic international food standards
d) the desirability of an efficient and internationally competitive food industry
e) the promotion of fair trading in food
f) any written policy guidelines formulated by the Forum on Food Regulation for the purposes of this paragraph and notified to the Authority.

[13] The insertion of this section relates to recommendation one.

Risk-based decision-making

The draft RIS proposes amendments to the FSANZ Act to support a more efficient and effective process to develop food regulatory measures, with risk being the key driver of process. In principle, ABA 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.

We are, however, disappointed that much of the focus of the draft RIS has been on improving efficiency for the government, and a process to look at efficiency drivers through reform for the benefit of industry has been of secondary concern. For example, at p 30, the draft RIS considers the statutory process for creating and varying food regulatory measures via applications and proposals, and calculates the impact this has on FSANZ to process them. However, there is no calculation of timeframes or cost for industry in preparing applications, or in implementing changes.

The segmentation of FSANZ applications into ten stages application creates significant bottlenecks, increases costs to industry and taxpayers, and delays timely updates to the Food Standards Code to the detriment of consumers. While there are some welcome proposals around fast-tracking low risk changes, there has not been consideration of procedural improvements to major changes.

Business has a great deal of experience in improving process flows through methods such as Lean Six Sigma. It is disappointing that process flow subject matter experts were not brought in as part of the review. This reflects a missed opportunity to deliver against the Terms of Reference.

Recommendation seven: That the FSANZ Board engages process flow experts who in partnership with industry can make recommendations that improve the FSANZ application process to one that focuses on growth and continuous improvement through process optimisation.

ABA supports the use of other regulatory instruments to assist in meeting the objectives of the Authority, particularly around the provision to ensure adequate information to consumers to make informed choices. The use of non-binding guidelines to provide advice to industry on meeting obligations would be useful to both industry and enforcement agencies, and in particularly should be written with small business in mind who may not have the resources or expertise to interpret new or amended food standards or how best to implement them. Developing these guidelines as part of the process in ensuring that

regulatory solutions are of least impact to industry and small business, as per our recommendation four, could create useful synergies.

The existing user guides are rather simplistic and don't presently provide significant guidance to industry. A system similar to the ATO's Taxpayer Ruling system could be an option which if translated to food safety would ensure industry as the regulated entity is on safe ground and avoid prosecution from state authorities by relying on a 'ruling' for technical issues, but still have the ability to challenge the matter if they disagree with an interpretation. A similar system could be implemented, noting that FSANZ does not and should not have enforcement powers.

We also 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.

Recommendation eight: 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.

ABA also 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.

Recommendation nine: In consultation with stakeholders, FSANZ develops a risk framework that would allow low-risk applications and proposals to undertake an expedited process for approval.

The draft RIS asserts that another solution to minimise the administrative burden for industry to compile evidence to support a comprehensive risk assessment would be in FSANZ had a statutory ability to recognise and adopt international risk assessments. This could be either as part of an application or proposal process, and/or through the automatic adopting of new standards from selection international regulatory systems, or with minimal checks to expedite consideration of standards that have been approved in a comparable overseas regulator for lower-risk amendments.

In principle, ABA supports these proposals with one caveat: if their purpose is to alleviate the administrative burden for industry to compile evidence, then 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 not remove the right of third parties to make an application under a non-expedited process, but it would prevent industry from being excluded through an expedited process when it hasn't been the instigator of the request for a regulatory 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.

Recommendation ten: That should FSANZ pursue an expedited process for the adoption of risk assessments or new or amended standards from international authorities or comparable food safety regulators, that such processes should only be used in an application instigated by industry or with the agreement of industry as the regulated entity, and with a mechanism that would allow a regulated entity to request ministerial review of a proposed amendment.

Governance

ABA notes that under the Government's current Administrative Orders, the Department of Agriculture, Water and the Environment is responsible for agricultural, pastoral, fishing, food and forest industries; primary industries research including economic research; administration of export controls on agricultural, fisheries and forestry industries products; and food security policy and programmes. It is the primary regulator of the food industry, and has the more complete understanding of food production, supply chain and food security issues of any portfolio in government. In Australia, FSANZ develop standards for primary production and processing and for food hygiene. It sets residue limits for

agricultural and veterinary products. FSANZ also supports the Department of Agriculture, Water and the Environment in its duty to inspect imported foods.

We note that in New Zealand, the primary responsibility of food safety and standards lies between FSANZ and the Ministry of Primary Industries, not the NZ Ministry of Health. It is clear that the day-to-day synergies are more significant between FSANZ and the Department of Agriculture, Water and the Environment rather than the Department of Health; and as such the Minister for Agriculture should hold primary responsibility for the FSANZ Act in Australia, with other jurisdictions having their Primary Industries / Agriculture Ministers holding the lead position on the Ministerial Food Forum.

Recommendation eleven: The Administrative Orders are amended to move responsibility of the *Food Standards Australia and New Zealand Act* to the Minister for Agriculture.

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, ABA 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.

We note that the draft RIS has elected not to make recommendations about new cost-recovery mechanisms for industry-initiated work, but that a separate targeted review on funding arrangements may be warranted, potentially to include whether a contribution by state and territory governments is justified.

Recommendation twelve: That the final composition of the FSANZ Board after any streamlining ensures that there is adequate representation of Board members with real-world industry experience to ensure a detailed understanding of the costs and impact of regulatory solutions proposed.

Other issues

There are a number of additional proposals raised by the draft RIS where ABA offers comment, as well as a couple of additional matters we raise that we note part of the draft RIS.

A. FSANZ's role in food incidents and recall

ABA supports 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.

Recommendation thirteen: That FSANZ's statutory functions be amended to allow FSANZ to coordinate action to respond to food incidents and food recalls on its own initiative.

B. Enforcement

ABA 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, bi-national 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.

Recommendation fourteen: There is no legislative amendment to give FSANZ an enforcement function.

C. Food Ministers' Meeting Decisions

ABA notes that under the FSANZ Act, decision making of the Food Ministers' Meeting is not prescribed, but it must be consistent with the Food Regulation Agreement (FRA). According to Part 3 – Administrative Arrangements – under the FRA, decisions are taken through simple majority voting by each jurisdiction. We believe that in light of the Review of COAG Councils and Ministerial Forums, which says that except where otherwise specified in legislation, decisions of ministerial forums should be done by consensus[14].

[14] Conran, P. 2020. *Review of COAG Councils and Ministerial Forums*

As FSANZ falls within the remit of the Review, it is incumbent on the current process to adopt this recommendation to ensure that best practice is being undertaken and that the Food Ministers' Meeting is adhering to recommendations endorsed by National Cabinet. We do not believe there are good reasons why this principle should not apply for decisions by the Food Ministers' Meeting and recommend the Food Regulation Agreement be amended to bring it into line with the COAG review outcomes.

Recommendation fifteen: That decisions of the Food Ministers' Meeting are taken through consensus, reflecting the reforms announced in the recent Review of COAG Councils and Ministerial Forums.

D. The role of the Food Regulation Standing Committee

ABA 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:*
> - *manages projects and resource to deliver on agreed Forum and FRSC priorities;*
> - *sets priorities and undertakes annual planning for the whole of System;*
> - *monitors and measures performance of the System;*
> - *conducts environmental scanning;*
> - *directs intelligence gathering; and*
> - *provides advice to inform strategic planning for the System.*

We believe 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.

Recommendation sixteen: The role of the Food Regulation Standing Committee be reviewed in conjunction with the principles of the Review of COAG Councils and Ministerial Forums, with a view to re-assigning its functions and abolishing this layer of administration.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 08:42:21**

About you

What is your name?

Name:
Vicki Robinson, National Advisor, Advocacy and Research Team, Pou Tongata, Cancer Society NZ

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Cancer Society NZ

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Cancer Society of New Zealand (NZ) is a non-profit organisation which aims to minimise cancer incidence, impact and inequity on all those living in Aotearoa, New Zealand. We work across the cancer continuum with key work areas that include health promotion, supportive care, information and resource provision, and funding of research.

Cancer is the single biggest cause of death in Aotearoa. Poor diet and unhealthy weight are the leading cause of cancer, after tobacco. Our food system is key to the prevention of the significant diet-related cancer in Aotearoa today. The Cancer Society believes the current options presented in the draft FSANZ Act Review Regulatory Impact statement (RIS) fail to recognise this and do not enable the Act to meet its primary goal of protecting public health. The proposed reforms instead increase barriers to diet-related disease prevention, compromise the independence of FSANZ and prioritise food industry profits over public health.

The Cancer Society recommends the RIS be revised to be fit for purpose and enable a world-leading food regulatory system with a greater focus on the equitable protection of the public health and diet-related disease such as cancer.

The Cancer Society NZ is a foundation member of Health Coalition Aotearoa (HCA). We support and endorse the submission of the Food Policy Expert Panel of Health Coalition Aotearoa on this Review of FSANZ Act 1991 – draft Regulatory Impact Statement.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The Cancer Society supports the Food Policy Expert Panel, HCA position and agrees that this act in its current form does not meet its primary goal of protecting public health, specifically long-term preventable diet-related health and disease such as cancer. We agree that there is a need to establish a revised food regulatory system that will effectively and equitably protect long-term public health.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

See HCA submission

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The food regulatory system plays a key contribution to the high and inequitable cancer risk especially of M■ori and Pacific populations in Aotearoa. The incidence of cancer is thirty percent higher for M■ori and cancer-related mortality almost twice that of non-M■ori. Pacific people in New Zealand and those living in rural and deprived areas or with a mental illness or a disability are also all affected by cancer more than non-M■ori. Equity issues such as these must be considered in all food regulatory decisions. The Cancer Society support the HCA submission's call for consultation and engagement with M■ori on this review to support the Crown's obligations under Te Tiriti o Waitangi as an important way to addressing inequities in the food system. We are concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Cancer Society does not agree that any of Options 1, 2 or 3 fully aligns with the objectives and aspirations of the food regulatory system to protect public health.
We are concerned that our current system prioritises food industry interests over public health. However, we believe the reduction of regulatory interventions associated with Options 2 and 3 would likely increase the health and economic burdens even further for individuals and governments.
For reasons outlined in the HCA submission, Option 1 is preferable to Options 2 and 3 , however we remain committed to the need for change and reform.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Failures of the current regulatory systems to protect against public health contributes to the 1500+ people affected by the 12-13 preventable diet and weight related cancer cases every year in Aotearoa. Stronger regulatory measures and better labelling would help protect against obesity, cancer and the associated economic burdens for both individuals and government.

The Cancer Society support the HCA submission's call for the inclusion of diet-related health and economic risks caused by the food regulatory system on the food supply to be included in the RIS.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

The Cancer Society supports the need for costs of the delays in the current measures be made for their impacts on public health, rather than just being considered for the food industry as outlined in the HCA submission.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The Cancer Society supports HCAs recommendation for the RIS to assess both the qualitative and quantitative health and economic impacts of this option and in particular those of the long-term public health and diet-related preventable disease, for both individuals and governments.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

See HCA submission

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Key risks outlined in the HCA submission include the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. They also include the health and economic risks of the failure to modify the food system, and to reduce the number and proportion of unhealthy products available and promoted which would reduce the inequitable public health and diet-related diseases such as cancer and their associated economic burdens.

The Cancer Society NZ supports the HCA view that the analysis of the risks to public health and consumers must be considered and prioritised in the RIS to support public health over food industry interests.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Cancer Society NZ does not support Option 2 which represents an elevation of industry interests over public health. As outlined by the HCA submission we do support the
- revision of the RIS to effectively address its objectives to protect public health.
- clarification of the definition of public health, including short and long-term health, and the prevention of diet-related disease.
- inclusion of sustainability as a core goal of the Act if done so as to not undermine public health.
- consideration the food regulatory system on M■ori, by endorsement of Te Tiriti o Waitangi to protect M■ori health.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The Cancer Society is supportive of an objective around 'sustainability' if the objective of public health can be maintained as the primary goal as outlined in the HCA submission. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

See HCA submission

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

For many people in Aotearoa-New Zealand, achieving a healthy diet and weight is not easy or equitable. Unhealthy diet, excess weight and cancer are all experienced disproportionately by M■ori and Pacific people. The current food system is contributing to these poor and inequitable poor health outcomes particularly for M■ori and Pacific populations in NZ and is a high burden on the health system. We support HCAs call for the FSANZ Act to endorse requirements of Te Tiriti o Waitangi to protect and improve equity in M■ori health. We recommend consultation with Maori on this review. We are concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No response

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Cancer Society NZ does not support Option 2. We believe Option 2 elevates food industry interests over public health and will likely lead to greater economic and health burdens in Aotearoa including diet-related cancer.
We are supportive of greater government led protections being built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease as identified in the HCA submission.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

See HCA submission.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

See HCA submission.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

See HCA submission.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

See HCA submission.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

See HCA submission.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

See HCA submission.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

See HCA submission.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We are concerned that Option 2 elevates food industry and processed food interests over public health. This will exacerbate diet-related cancer and economic risk for consumers and the health system and not achieve the primary objectives of protecting public health.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

See HCA submission.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

See HCA submission.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

See HCA submission.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

See HCA submission.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

See HCA submission.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

See HCA submission.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

See HCA submission

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

As outlined in the HCA submission, Cancer Society NZ does not agree that Option 3 aligns well with the objectives and aspirations of the regulatory food system and FSANZ should focus on its remit of public health and safety. We support the response outlined in the HCA submission including the need for resourcing of FSANZ to enable it to perform any elements of this guidance role to be additional and not at the expense of FSANZ's existing functions.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

See HCA submission.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

See HCA submission.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

See HCA submission.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

See HCA submission.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

See HCA submission.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

See HCA submission.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

See HCA submission.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

See HCA submission.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

See HCA submission.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.
The Cancer Society does not support the policy approaches outlined in this RIS as fully reflecting the concerns and recommendations put forward by public health and consumer organisations in earlier consultations. We are supportive of the HCA submission as a way to better reflect the public health of New Zealanders.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

We consider the priorities for the FSANZ Act review should be to:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet the current and future health needs of New Zealand associated with obesity and preventable diet-related disease, illness and disability.
See HCA submission for further details.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

None of the options in the draft RIS align with the draft aspirations for the Food Regulatory System and are not in line with its overall vision. See HCA submission for further details.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 10:39:48**

About you

What is your name?

Name:
Belinda Castles

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Consumer organisation

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Consumer NZ

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Consumer NZ is an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial, and providing comprehensive consumer information and advice.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Consumer NZ strongly believes the RIS must also consider the Act's primary goals of protecting public health, in particular long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, non-communicable diseases are a major cause of health loss. After tobacco (the leading risk factor), the next five risk factors are related to poor diet (dietary risks, high body mass index, high systolic blood pressure, high fasting blood glucose and alcohol use). It is estimated that over one-third of the health loss is preventable (1).

Overweight and obesity also impose a significant financial burden. The estimated annual societal costs in New Zealand are approximately $800 million (2). In comparison, the estimated annual cost to society from foodborne transmission of disease is approximately $86 million (3). These figures highlight the importance of ensuring food regulation addresses long-term population health and not just foodborne transmission of disease.

Many New Zealanders have poor diets. A recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%) (4).

The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively

protect long-term public health into the future.

Ensuring consumers have adequate information about the food they are purchasing should also be considered as part of this regulatory impact analysis. The range of food available has increased diversity and complexity, and regulation should ensure labelling information is accurate, comparable, consistent and enforceable.

Failing to consider these policy problems ignores the concerns and recommendations put forward by public health and consumer organisations in previous consultations.

References
1. Longer, Healthier Lives: New Zealand's Health 1990-2017. A report on the health loss estimates of the 2017 Global Burden of Disease Study (https://www.health.govt.nz/publication/longer-healthier-lives-new-zealands-health-1990-2017).
2. Lal, A.; Moodie, M.; Ashton, T.; Siahpush, M.; Swinburn, B. Health care and lost productivity costs of overweight and obesity in New Zealand. Aust NZ J Public Health. 2012; 36:550-6 doi: 10.1111/j.1753-6405.2012.00931.x
3. Cressey, P., Lake, R. 2008 Risk ranking: Estimates of the cost of foodborne disease for New Zealand. Institute of Environmental Science & Research Limited
4. https://www.sciencedirect.com/science/article/abs/pii/S2212267220312302?via%3Dihub

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Consumers have a growing appetite for greener food choices. Consumer NZ's consumer issues survey, published in February 2020, found environmental issues topped the list of consumer concerns for the future, for the second year in a row (https://www.consumer.org.nz/articles/consumer-issues-survey).

It is now well documented the food we eat has an impact on climate change. In 2019, a United Nations' Intergovernmental Panel on Climate Change report said a plant-based diet and sustainably produced animal protein can help tackle climate change.

However, current food regulations don't make it easy for consumers to make informed decisions about the environmental impact of their food choices. For example, many consumers want to know whether the products they are purchasing contain palm oil. Consumer NZ's 2018 survey found 68 percent of Kiwis think palm oil labelling should be mandatory. Despite this, current regulations allow palm oil to be labelled as "vegetable oil" in the ingredients list, allowing manufacturers to use this oil without disclosing it on the label.

Although Consumer NZ supports sustainability as a core goal, the Act must ensure companies don't manipulate its inclusion to undermine public health. For example, sustainability claims must not be able to be used by the processed food industry to promote unhealthy food that is high in saturated fat, added sugar and sodium.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations, which has equity implications particularly for M■ori and Pacific populations who suffer a disproportionate burden of diet-related disease. M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse Te Tiriti o Waitangi obligations to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 (the status quo) represents a negative outcome for public health. The current system does not address the prevention of diet-related non-communicable disease through food regulation. It also doesn't ensure consumers have access to clear, transparent information on food packaging.

Unfortunately, options 2 and 3 in the draft RIS fail to present better alternatives. We are concerned Option 2 and 3 are not aligned with the aspirations for the food regulatory system that have already been consulted on.

Food must be assessed as safe before approval and standards must be assessed in the Australian/New Zealand context before adoption. We support the retention of this approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

We also support retention of the existing approach that recognises trade, while a factor for consideration, should not be elevated to a key objective of the Act. In our view, the current prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health
- Failure to address the prevention of diet-related non-communicable disease through food regulation. This will result in increased rates of overweight and obesity, heart disease, type-2 diabetes and cancer. This will place an increased financial burden on government agencies.
- Failure to ensure consumers have access to clear, transparent information on food packaging to enable them to make a healthier choice via improved food labelling.
- Delays in progressing public health proposals (such as added sugar labelling) under the current system.

Risks to government
An increase in rates of diet-related non-communicable disease will place a financial burden on governments. As noted in our response to a previous question, the estimated annual societal costs in New Zealand are approximately $800 million.

These costs must be addressed and quantified in the RIS analysis.

Risks to industry
Consumer NZ acknowledges that food companies may incur some costs under the current system because of application process requirements and delays in approving applications. However, we do not accept the quantification of these costs in the RIS.

We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and extrapolates that cost to arrive at a figure attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost.

The RIS should use independent verified economic data not costings provided by a limited representation of the food industry.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The RIS must assess the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health. However, it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate.

Costs and benefits that must be considered for option 1 include:
Costs
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See the case study below in response to question 8.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
Benefits:
● The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market.
● The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

Case Study: Pregnancy warning labels on alcohol
The recent proposal in Australia and New Zealand for pregnancy warning labels on alcohol provides a case study of 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 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. The time to complete the proposal was nearly 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include this type of analysis to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3. Consumer NZ believes that pregnancy warning labels would have been 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

Further comments
As public health impacts have been excluded from this document, a separate process must be commissioned. This review should consider how the current food system has contributed to the burden of obesity and non-communicable diseases in New Zealand, and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Under Option 1, public health and consumer choice interests are at risk. Option 1 does not put public health and consumer choice at the forefront of food regulation to reduce the rates of overweight and obesity and ensure consumers have access to information to make a healthier and informed choice.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ does not support Option 2, component 1 as it represents an elevation of industry interests. The strengthening of trade and regulatory impact considerations is likely to act as a barrier to the implementation of public health measures.

We are concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system that have already been consulted on.

We discuss specific components in turn:
Objects and factors to which FSANZ must have regard

1.Clarification of definition of public health
Consumer NZ agrees that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease.

Consumer NZ supports the framing of long-term health in the proposed definition. However, short and long-term health should be specified as separate objectives in s3 and s18 of the Act. These two elements should be subject to separate funding, resourcing and strategic planning. The Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal
Consumer NZ strongly opposes the inclusion of trade as a core goal. Current legislative provisions ensuring industry is competitive and efficient are adequate. We are concerned that recognising trade as a core goal may enable the food industry to challenge any public health regulatory interventions because of trade concerns.

The draft RIS notes that the status quo (which does not include trade as a core objective) has delivered good trade outcomes over many years. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions.

3. Food sustainability
Consumer NZ supports the inclusion of sustainability as a core goal of the Act. It is now well documented the food we eat has an impact on climate change. In 2019, a United Nations' Intergovernmental Panel on Climate Change report said a plant-based diet and sustainably produced animal protein can help tackle climate change.

Consumers have a growing appetite for greener food choices. Consumer NZ's consumer issues survey, published in February 2020, found environmental issues topped the list of consumer concerns for the future, for the second year in a row (https://www.consumer.org.nz/articles/consumer-issues-survey).

However, current food regulations don't make it easy for consumers to make informed decisions about the environmental impact of their food choices. For example, many consumers want to know whether the products they are purchasing contain palm oil. Consumer NZ's 2018 survey found 68 percent of Kiwis think palm oil labelling should be mandatory. Despite this, current regulations allow palm oil to be labelled as "vegetable oil" in the ingredients list, allowing manufacturers to use this oil without disclosing it on the label.

Although Consumer NZ supports sustainability as a core goal, the Act must ensure companies don't manipulate its inclusion to undermine public health. For example, sustainability claims must not be able to be used by the processed food industry to promote unhealthy food that is high in saturated fat, added sugar and sodium.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise
Consumer NZ supports the inclusion of indigenous culture and expertise in the objectives of the Act.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

Consumer NZ opposes the inclusion of the regulatory impact on industry, particularly small businesses, as a factor to which FSANZ must have regard when setting food standards. This will create a barrier for changes to food standards that would protect public health.

FSANZ functions
Consumer NZ supports changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above.

However, we do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15). This function should remain with food ministers.

Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.
Consumer NZ supports establishing criteria that food ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1
Consumer NZ does not agree with the RIS statement that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must be amended to include health and economic costs linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

Consumer NZ supports a broader definition of sustainability that reflects environmental, health, economic and social impacts.

Consumer NZ recommends there must be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ does not support Option 2, Component 2. These proposed reforms represent a prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and an increased economic burden for New Zealand governments, through increased health expenditure.

However, Consumer NZ agrees it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources, as long as regard is given to the interest of public health outcomes and consumer choice.

Using other regulatory instruments: codes of practice and guidelines
Consumer NZ agrees it may be beneficial to use other regulatory instruments in some situations. However, these should not take the place of regulated food standards.

Consumer NZ does not support non-regulatory tools to achieve system objectives. Co-regulatory, voluntary and industry-led initiatives have been repeatedly shown to fail at protecting public health and have caused delays in creating mandatory regulation.

Consumer NZ supports the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems. We also agree that only low-risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals
In theory, Consumer NZ supports the idea of a risk-based model where low-risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals.

However, without further information about what is likely to be considered “low” or “high” risk it is difficult to provide further comment. It is important to carefully define these terms and limit “low risk” issues to those that do not have any impact on either short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on food supply and consumers’ health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting
Consumer NZ does not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to department officials. This could assist in streamlining decision-making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

New product approval pathways
Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks
Consumer NZ opposes the proposal for automatic adoption of overseas risk assessment. Although there may be a mechanism to consider risk assessments for overseas jurisdictions to prevent duplication, these must be reviewed for the New Zealand and Australia situation.

Dietary patterns vary between countries so cannot be automatically applied. International standards may also not be best-practice so it’s important we don’t adopt standards that may have a detrimental impact on consumers. A strategic environmental assessment should also be undertaken in decision-making.

Consumer NZ strongly opposes the proposal that these pathways to accept international risk assessments are not subject to approval by food ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways
Consumer NZ strongly opposes the proposal for an industry self-substantiation pathway. It is fundamental that public health (short and long-term) is considered for new applications and we don’t believe industry-led pathways will adequately protect consumers.

We know that self-substantiation of health claims is not in the best interests of consumers. Companies must notify self-substantiated evidence to FSANZ, but this evidence is not reviewed before the food-health claim is published on the FSANZ website. Although MPI takes a role in reviewing evidence, a product may be on the market before an assessment is complete.

Companies are also making health claims without notifying FSANZ. For example, in May 2021 Consumer published an article about food claims and found products making claims that aren’t pre-approved under the Food Standards Code or notified to FSANZ. We are concerned there are many other products being sold that don’t have sufficient evidence to substantiate claims.

We also oppose the proposal to exempt products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Consumer NZ does not support this additional delegation ability. This component already allows for the FSANZ Board to delegate to the CEO and for Ministers to delegate to departmental officials. Further delegation potentially gives too much power to the FSANZ CEO and Board and removes power from the jurisdictions, which may undermine the joint nature of the food regulatory system.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

Consumer NZ considers that guidelines or codes of practice are only appropriate for information that explains how to implement food standards.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The finance sector should not be compared to food regulation. The RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

Consumer NZ does not support the use of regulatory sandboxes with regards to novel food products and ingredients and new technologies. The current standards regarding novel foods and new technologies are in place to protect public health. Allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ does not support reform options that significantly expand FSANZ’s areas of responsibility. FSANZ must focus on its key priority to develop food standards and commit additional resources to reorient to protect long-term public health. Any additional functions that may undermine this primary focus are not supported because they are likely to divert resources away from priority areas.

Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.
Consumer NZ supports FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

The review process outlined in the RIS focusses on reducing the regulatory burden for the food industry and short-term food safety issues. Consumer NZ requests that the RIS incorporates a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health and consumer organisations and enable evidence review by FSANZ.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned. FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ creates a data bank, access to this data must be free to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ does not support Option 2, Component 6.

Changing FSANZ Board arrangements
Consumer NZ does not support the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a solely skills-based approach, although we expect members nominated by external organisations have relevant skills.

Consumer NZ does not support reducing the Food Ministers' role in approving Board appointments.

Consumer NZ is concerned that New Zealand is underrepresented on the Ministerial Forum. Currently, New Zealand only has one vote, whereas Australia is represented by the Australian Government, in addition to each State and Territory. This imbalance needs to be urgently addressed.

Investment into business solutions
Consumer NZ supports an online portal. However, this must be resourced separately in addition to FSANZ's usual operations.

Consumer NZ notes that this is outside the scope of the review. However, we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work
Consumer NZ does not support the prioritisation of paid industry applications ahead of public health proposals. We also do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of paid applications at the expense of public health measures.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritises the profits of the food industry, while placing the burden of risk, both from a health and economic perspective on individual consumers and on New Zealand's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

These costs are similar to those identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications ahead of proposals that have widespread public health impact.

If additional cost-recovery mechanisms are introduced, we are concerned this could exacerbate this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry.

Consumer NZ strongly recommends that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of specific public health and consumer pathways to request changes to the food standards code. This pathway must acknowledge the resource constraints of public health and consumer organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Consumer NZ does not usually engage with the food regulatory system through making applications to change food standards.

Our main engagement is with proposals to change food standards. This process requires significant resources, and it is difficult for consumer organisations to prioritise this engagement in a timely manner.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The most significant barrier to engaging with the food regulation system is our resources. Engaging with proposals is very resource intensive and there are often multiple rounds of consultation on one topic, especially on topics that are likely to have a public health benefit.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above industry profits. One element of reform must include a specific public health review process and a review process for consumers to seek amendments to the Food Standards Code that are in the public interest. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are industry-focused and don’t allow for public health and consumer engagement. The RIS should be revised to include a public health pathway to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Consumer NZ does not support Option 3. Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We are also concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system, which has already been consulted on.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards
We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst we support independent industry guidelines developed by FSANZ, we do not support this process being industry led. Industry should not have a lead role in developing the guidance provided by FSANZ.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

Consumer NZ does not support the current system of self-substantiation but agrees that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not support changes to the Act to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip jurisdictions to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims.

It is important that substantiation of claims is reviewed before products are on the market.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

Consumer NZ does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

Consumer NZ does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend Australia's and New Zealand's influence on the international stage.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS, the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15). This role should remain in the food ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We also do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals that the RIS specifically states "often have system-wide impacts" (p36) and "arguably have a wider reaching benefit for the broader Australia and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No. The policy approaches fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be prioritised over public health. Option 1 (the status quo), whilst itself inadequate, would be a better outcome for consumers.

Policy approaches that would address this policy problem include, but are not limited to:
● Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
● Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
● Creating a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another
● Setting statutory timeframes for proposals.
● Undertaking a review of the health claims system with the view to redefining the system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices. This review should include oversight and enforcement mechanisms for the system, as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
Consumer does not support any components (1,2,3,4,5 or 6) being pursued or prioritised.

Whilst there are some minor elements that could be implemented, we do not think any should be prioritised above ensuring FSANZ meets its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48) and ensuring consumers are adequately informed.

Option 3
Consumer NZ does not support any components (1,2,3 or 4) being pursued or prioritised.

Whilst there are some minor elements that could be implemented, we do not think any should be prioritised above ensuring FSANZ meets its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48) and ensuring consumers are adequately informed.

Consumer NZ considers the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet the current and future health needs of New Zealand associated with obesity and preventable diet-related disease, illness and disability.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Consumer NZ does not believe the draft reform options align with the draft Aspirations for the Food Regulatory System. The aspirations are public health and consumer focused and the options presented will not enable the aspirations to be met. As noted in the Health Coalition Aotearoa (HCA) submission, the Aspirations for the Food Regulatory System state that the ‘Food Ministers’ are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

Further, as the HCA notes, in the Communique following the most recent meeting on 14 May 2021, Food Ministers ‘...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System’. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers’ intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 11:26:03**

About you

What is your name?

Name:
Sally McDonald

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Food Governance Node, Charles Perkins Centre, the University of Sydney

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
New South Wales

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Food Governance Node was created by Dr Belinda Reeve and Alexandra Jones in 2016, with the aim of creating a cross-disciplinary platform for the development and evaluation of new legal, policy, and regulatory strategies for improving diet and nutrition in Australia. The Node includes researchers from faculties and research centres across the University of Sydney, as well as from other academic and non-government organisations in Australia. It draws on its members' expertise in law, business, public health and health policy in seeking solutions to noncommunicable disease that lie at the junction of law, regulation, and public health.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: 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, and the provision of adequate information to enable consumers to make informed choices. We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness -- and this protection must be maintained. Australians are not, however, effectively protected from long-term health impacts linked to food. Around two thirds of Australian adults and one quarter of Australian children are above a healthy weight, with overweight and obesity contributing 8.4% to the burden of disease.

Most Australians have poor diets, with more than a third of energy coming from unhealthy food, and poor diet contributing a further 7.3% to the burden of disease. The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.
The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.
Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
• able to be independently verified by reference to clear and consistent standards.
• not used to promote foods that are unhealthy.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect Indigenous people more generally.

The Food Governance Node does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and M■ori peoples. We support the inclusion of indigenous culture and expertise in the objectives of the Act. 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 M■ori people, not only limited to the introduction of new food products.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve "less regulatory intervention and associated regulatory burden", as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone, the current system, which the draft RIS acknowledges has "managed to largely prevent the market failures that they are designed to address" represents a better outcome. We are concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect Australian and New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in our view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

● The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian/New Zealand context before adoption. We support the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

● The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health:
Key risks to consumers and to public health in retaining the status quo are:
● the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australian and New Zealanders and in terms of costs to both Governments. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
● the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.
● the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform.

Risks to government :
A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity). A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in Australian and New Zealand children and adults, will incur significant economic costs for both governments. These risks must be addressed and quantified in the RIS analysis.

Risks to industry:
We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

The Food Governance Node notes that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach cannot be used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:
Costs:
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
● The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market

● The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol:

The recent proposal in Australia and New Zealand 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 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 a few months 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 New Zealand 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and Australia and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and non-communicable diseases in Australia and New Zealand; and include modelling of future costs and consequences should Australia and New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

Key risks to consumers and to public health in retaining the status quo are:
● the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.
● These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australian and New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.
● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Food Governance Node does not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.

The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

We are concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

We discuss specific components in turn:

Objects and factors to which FSANZ must have regard:

1.Clarification of definition of public health

We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

We strongly oppose this element of reform, as it will undermine Australia and New Zealand's' health and detract from the primary public health objective of the Act.
The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good ...trade outcomes over many years. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to Australia and New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where both countries lag behind in public health protection when they should be world leaders.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

We support the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

We support the inclusion of indigenous culture and expertise in the objectives of the Act. 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 M■ori people, not only limited to the introduction of new food products.
5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation

on business is already considered by FSANZ as part of its process in developing and amending food standards.

5. Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions:

We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers' hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.
Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1:

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

The Food Governance Node supports a definition of sustainability that reflects environmental sustainability and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

A greater focus on sustainability will future-proof our agricultural and food sectors in a rapidly changing world. Our food system must change to enable Australia and New Zealand to deliver on our international obligations to reduce carbon emissions and to present as a player in the global market.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

The Food Governance Node does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and M■ori peoples. We support the inclusion of indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and support the proposition that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Food Governance Node does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for both the Australian and New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.
We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto Australian and New Zealand consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals:

In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:

● Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
● While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
● We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting:

We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.
We consider it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.
We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways:

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks:

The Food Governance Node strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that Australia and New Zealand should be aiming for. In many cases Australia and New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the both the Australian and New Zealand context.

We note that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will ‘….undertake minimal assessments of the suitability of the standards within the Australian-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the Australian and New Zealand contexts, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways:

We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The Food Governance Node does not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We do not have this data, but we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs above this process should be considered as part of this RIS analysis of administrative burden.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in Australia and New Zealand. Adopting international risk assessments risks lowering the standard of protection in Australia and New Zealand, resulting in both countries falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Food Governance Node strongly opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

The Food Governance Node does not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards:

We support FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

We ask that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. We support efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

Expanding FSANZ's food safety role: coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials:

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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting:

The Food Governance Node supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts:
We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Changing FSANZ Board arrangements:

We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and

consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills-based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions:

We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.
We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work:

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.
There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the food industry, while placing the burden of risk, both from a health and economic perspective on individual Australia and New Zealand consumers and on health system of both countries.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:

● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.

● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.

● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

● The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

Costs and benefits of Component 1:

The Food Governance Node does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have 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 RIS of the impact of the proposed reforms on public health outcomes.

We know how many Australians have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in Australia and New Zealand. We also have data on the economic costs of obesity, including costs borne by individual Australians and New Zealanders and by governments.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of Australians and New Zealanders who have a poor diet, overweight and obesity and 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 RIS 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.1 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.

1 PwC Australia 2015. Weighing the cost of obesity: a case for action. Australia: PwC Australia

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The Food Governance Node believes this question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

The Food Governance Node does not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We are concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards :
We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines:
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims:
We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine:
We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
- Set statutory timeframes for proposals.
- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
- Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2:
None. We do not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, we do not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3:
None We do not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

We consider the priorities for the FSANZ Act review are:

1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet Australia's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the Australian Dietary Guidelines. e.g., fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

They do not at all. The aspirations are very public health focused and the options presented will not enable the aspirations to be met. None of the options address the current issue of application timeframes and the prioritisation of these over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives (all public health asks in the consultation).

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 12:30:04**

About you

What is your name?

Name:
Demelza O'Brien

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Regional Public Health

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: The Act in its current form does not enable the food regulatory system to meet its primary object 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.

Due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness, and this protection must be maintained. New Zealanders are not, however, effectively protected from long-term health impacts linked to food.

One in three of New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably with those adults living in the most socioeconomically deprived areas being 1.8 times as likely to be obese as adults living in the least deprived areas and the prevalence of obesity among adults differs by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived areas.

New Zealand has the third highest adult obesity rate in the OECD with the rates continuing to increase. (1) The proportion of morbid obesity represents as much as 70-80% of this obesity growth. (2)

Most New Zealanders have poor diets. For example a recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%)

from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%).(3) The review of the Act, and the options for reform, must therefore address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. In New Zealand according to the Ministry of Health it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. Regional Public Health (RPH) is concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti o Waitangi considerations. RPH considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

It is recommended that the RIS is revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches presented in the RIS also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

(1) Ministry of Health. 2020. Annual Data Explorer 2019/20: New Zealand Health Survey [Data File]. URL: https://minhealthnz.shinyapps.io/nz-health-survey-2019-20-annual-data-explorer/
(2) OECD (2019), The Heavy Burden of Obesity: The Economics of Prevention, OECD Health Policy Studies, OECD Publishing, Paris, https://doi.org/10.1787/67450d67-en
(3) Fangupo LJ et al. Ultra-processed food intake and associations with demographic factors in young New Zealand children. J Acad Nutr Dietetics 2021; 121: 305-13. URL: https://www.sciencedirect.com/science/article/abs/pii/S2212267220312302?via%3Dihub

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

No response

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

RPH notes that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. RPH is concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. RPH considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve “less regulatory intervention and associated regulatory burden”, as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone the current system, which the draft RIS acknowledges has “managed to largely prevent the market failures that they are designed to address” represents a better outcome. RPH is concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in RPH’s view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

● The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian/New Zealand context before adoption. RPH supports the retention of this preventive approach. RPH does not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

● The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health

Key risks to consumers and to public health in retaining the status quo are:
● the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as it is known that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
● the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.
● the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Risks to government

A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Risks to industry

RPH acknowledges that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. RPH does not, however, accept the quantification of these costs in the RIS. RPH is concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. RPH asks that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

RPH notes that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach cannot be used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The draft RIS states (on page 18) that its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:
Costs
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
● The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
● The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent proposal in New Zealand and Australia 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 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 a few months 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and non-communicable diseases in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

Key risks to consumers and to public health in retaining the status quo are:
● the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.
● These health issues are also linked to economic risk, as it is known that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
● The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.
● The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Not applicable

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative outcome.

RPH does not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.

The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

RPH is concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

To discuss specific components in turn:

Objects and factors to which FSANZ must have regard

1. Clarification of definition of public health

RPH agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This

is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease.

RPH supports the way long-term health is framed in the proposed definition however it must be amended to separate short-term and long-term health and include these two public health elements as separate and distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

RPH strongly opposes this element of reform, as it will undermine New Zealand's' health and detract from the primary public health object of the Act.

The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.

Trade must remain subordinate to all objectives of the Act not only to the primary object of public health protection, but also the goals of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

RPH supports the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

RPH supports the inclusion of indigenous culture and expertise in the objectives of the Act. RPH supports a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. RPH is concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. RPH considers that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti o Waitangi.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

6. Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions

We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers' hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.

We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

No response

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No response

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

RPH does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.

RPH supports an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

RPH agrees that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

RPH supports the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals

In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:
● Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
● While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
● We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

RPH agrees that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting

RPH does not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.
RPH considers that it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

RPH does not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the draft RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks

RPH strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and on the whole we think that this is sufficient. RPH does not support providing FSANZ with additional ability to adopt or accept international risk assessments without review and to apply these assessments to the New Zealand context.

RPH notes that in addition to an 'automatic adoption' approach, the RIS proposes a 'minimal checks' pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.' It is difficult to fully assess this without detail of what these 'minimal assessments' will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

RPH strongly opposes the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways

RPH strongly opposes the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

RPH strongly opposes the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. RPH notes the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

RPH does not support expansion of self-substantiation.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to the CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

RPH does not think that codes of practice and guidelines should replace food standards. RPH considers that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

RPH strongly opposes the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

RPH notes that the draft RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The draft RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

RPH is also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. RPH strongly opposes any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. RPH does not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

RPH does not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

RPH does not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall RPH does not support this component. RPH does not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.

RPH supports FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. RPH supports FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

RPH asks that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. RPH supports efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

Expanding FSANZ's food safety role: coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials

RPH does 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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

RPH would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

FSANZ and Food Ministers joint agenda setting

RPH supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts

RPH supports earlier involvement with FRSC and collaborating with enforcement agencies. RPH supports information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

RPH would like to re-iterate that from a public health perspective the status quo will achieve better health outcomes then policy options 2 and 3 presented in the draft RIS.

Changing FSANZ Board arrangements

RPH does not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. RPH does not support any increase in industry representation on the Board, and recommends industry representation be reduced to one member.

RPH recommends retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. RPH does not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. RPH also does not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

RPH does support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions

RPH supports an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

While RPH understands that the RIS notes this is outside the scope of the review, RPH is concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work

RPH does not support the prioritisation of paid industry applications ahead of public health proposals. RPH does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). RPH strongly recommends the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual New Zealand consumers and on New Zealand’s health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:
● The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
● 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
● The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
● The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

Costs and benefits of Component 1

RPH does not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers’ health and the economic cost for government. As discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

Data and analysis are, however, available 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 RIS of the impact of the proposed reforms on public health outcomes.

It is known that many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. The contribution that poor diet and overweight and obesity make to the burden of disease in New Zealand is also known.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS can, however, quantify the economic and health costs of a slight change in these levels.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, RPH is concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. RPH does, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

RPH strongly recommends that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. RPH also recommends the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

RPH does not engage with the system by requesting applications to change food standards. This is because the current system is biased towards industry interests and there is no clear pathway designed for public health organisations to request review and amendment of food standards as a whole, taking into account the effect of food supply in its entirety on public health.

RPH engages with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that require significant resources to engage and advocate for change. It is very often difficult for public health organisations to have sufficient resource to prioritise this engagement in a timely manner. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as there are no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

RPH is concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

NO response

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

RPH does not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Whilst RPH supports independent industry guidelines developed by FSANZ, we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.

Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

RPH does not support the current system of self-substantiation but agrees that guidance is necessary to ensure organisations comply with regulations for general level health claims. RPH does not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed. In New Zealand this is currently undertaken by MPI and it is appropriate to remain with an independent assessor, however MPI could be further resourced to do this work.

Ministers to determine whether a product is a food or a medicine

RPH is not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to

make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

RPH does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

RPH does not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No response

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. RPH does not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. RPH does not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals with the resulting elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

RPH does not support the prioritisation of paid industry applications ahead of public health proposals. RPH does not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving

the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. RPS does, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (p37). RPH strongly recommends the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealanders. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

● Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
● Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
● Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
● Set statutory timeframes for proposals.
● Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
● Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2

None. RPH does not think any of components 1, 2, 3, 4, 5 or 6 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of the components of Option 2 that could be implemented, RPH does not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3

None. RPH does not think any of components 1, 2, 3 or 4 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, RPH does not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

RPH considers the priorities for the FSANZ Act review should be:

1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in

response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet the current and future health needs of New Zealand associated with obesity and preventable diet-related disease, illness and disability. Align with the Aspirations for the Food Regulatory System document:
a. support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues (This means that future standards and regulatory decision would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines, e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

RPH notes that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, RPH recommends that the Ministers amend the Aspirations to:
• Include an additional aim to ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/NZ for all Australians/NZers.
• Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.
• Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

Analysis of RIS Options against Vision and Aims of the draft Aspirations for the Food Regulatory System

Analysis of the VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.
• Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting Australians from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
• Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
• reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;
• remove safeguards resulting in less focus on improving and protecting safety;
• elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
• fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;
• fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.
• Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:
• centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
• focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

Analysis of Aim 1: to protect the health and safety of consumers by reducing risks related to food
• As previously mentioned, RPH strongly recommends that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.
• Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect toof the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
• Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
• Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

Analysis of Aim 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.

• Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

Analysis of Aim 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals "often have system-wide impacts" (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
• Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

Analysis of Aim 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand
• Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all Australian governments.
• Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will, however, result in an even greater economic burden from chronic disease on both consumers themselves and all Australian governments and will have increasingly damaging impacts on health and environmental sustainability.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the immense economic burden of chronic disease on consumers themselves and all Australian governments.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 12:49:04**

About you

What is your name?

Name:
Sue Rana

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Other (please specify)

If 'other' sector selected, please specify in the text box:
Grape and wine sector

What is your organisation?

Organisation:
Australian Grape and Wine Incorporated (Australian Grape & Wine)

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Australian Grape and Wine Incorporated (Australian Grape & Wine) is Australia's national association of winegrape and wine producers. Our activities focus on providing leadership, strategy, advocacy and support to serve Australian wine businesses now and into the future.
We represent the interests of the more than 2,500 winemakers and 6,000 winegrape growers working in Australia. Our role is to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian wine and winegrape growing businesses. These businesses make a significant contribution to underpinning regional economies by driving growth in jobs, regional exports and food and wine tourism.
Australian Grape & Wine's voluntary membership represents over 75% of the national winegrape crush. We represent small, medium and large winemakers and winegrape growers from across the country. Policy decisions by the Australian Grape & Wine Board require 80% support, ensuring no single category can dominate the decision-making process and guaranteeing policy is only determined if it provides significant industry benefit. In practice, most decisions are determined by consensus.

Australian Grape & Wine is recognised as a representative organisation for winegrape and wine producers under the Wine Australia Act 2013 and is incorporated under the SA Associations Incorporation Act 1985. We work in partnership with the Australian Government to develop and implement policy that is in the best interests of winegrape growers and winemakers across Australia.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Australian Grape & Wine welcomes the opportunity to contribute to the Review of the Food Standards Australia New Zealand Act 1991 (the FSANZ Act). This review presents an opportunity to improve outcomes for Australian consumers, taxpayers, food and beverage manufacturers, FSANZ officials and governments across Australia and New Zealand, all of whom want to see an efficient and effective FSANZ. It is incumbent upon us to make sure we do not waste this

opportunity to ensure this critically important organisation has the legislative underpinnings necessary for it to focus on its core objective of ensuring food safety, in the current environment, and in the future.

When the Review was first announced, we were pleased that the Terms of Reference (ToRs) for the Review recognised the importance of the food industry (which includes grape growing and winemaking in this definition) to regional communities and the broader economies of Australia and New Zealand. The ToRs referred to ensuring FSANZ's operations were consistent with best practice regulation, and that its purpose and outcomes promoted an efficient and internationally competitive food industry. It highlighted the need to ensure the regulatory system imposed the least burden on business, particularly small business, to meet its regulatory objectives. These ToRs reflect many of the concerns food and beverage manufacturers have raised about FSANZ's performance in recent years, and we fully endorse them.

The draft Regulatory Impact Statement (RIS) falls short of aligning with the ToRs and focuses too heavily on the internal functions and resourcing of FSANZ, as opposed to the needs of consumers and food and beverage producers now and in the future. We believe it fails to deliver a clear and succinct plan to position FSANZ as an agile, responsive and efficient food regulatory system.

The draft RIS proposes a broad-brush expansion of FSANZ's objectives, extending its remit well beyond food safety into areas such as agricultural practice, environmental sustainability and climate change. Worse still, the draft RIS also proposes to redefine FSANZ's responsibilities in public health, away from its original intention of ensuring confidence in our food quality and safety, into wide-ranging preventive health policy, including to "shape population dietary and consumption trends". The redefined interpretation of public health to include preventive health initiatives which address issues such as diet and obesity, is inconsistent with FSANZ's core purpose, and its original legislated responsibilities. There is a risk with an expanded scope that FSANZ will lose its original focus on ensuring the joint food regulation system is rigorous in its approach to safety.

A move into areas beyond food safety is undesirable for a number of reasons, including:
• A shift into the realm of health policy formulation would drastically change the core purpose of FSANZ, i.e., to develop food standards for Australia and New Zealand in line with policy direction from Ministers.
• The suggestions to engage in policy relating to issues like sustainability, for example, are well-outside the scope of FSANZ's role and would also shift resources away from industry priorities around innovation and assessing applications.
• For FSANZ to undertake policy work on this scale, the Australian Government would need to invest in a significant budgetary allocation and strip responsibilities from existing government agencies.
• FSANZ is not a policy development agency on public health and preventative health - these are, and should remain, a function of the Department of Health.

Australian Grape & Wine cannot see a compelling rationale for the inclusion of these broader objectives for FSANZ. The RIS does not identify what the problem is with regard to issues like sustainability and public health policy, and critically, does not provide adequate information as to why FSANZ should engage in this space. We strongly recommend that FSANZ re-focuses on providing an efficient food standard-setting system, ensuring stakeholders and consumers are confident in the safety and quality of our food and that this confidence manifests into domestic and export success.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Sustainability in agriculture and food and beverage manufacturing, is a critical issue that requires smart and collaborative policymaking from governments and a commitment from businesses to continually strive to conduct themselves in a sustainable manner. This is a focus for grape and wine businesses in Australia. Business owners want to grow grapes and make wine sustainability, not only because consumers and retailers increasingly demand it, but because businesses want to be good stewards of their land, and responsible producers in the community. However, as noted in our response to Question 1, Australian Grape & Wine does not believe there is a logical or compelling case for FSANZ to play any role in regulating sustainability in agriculture or food and beverage manufacturing.

Sustainability policy issues are already managed by federal, state and territory governments and their departments. Sustainability claims can be backed up by certification schemes (such as the Sustainable Winegrowing Australia program), and these types of claims, inter alia, are subject to existing consumer law. Furthermore, these policy settings are rightly set by our elected political representatives in government.

The RIS does not present a compelling case for change or identify a problem that needs to be solved. The RIS does, however, repeatedly refer to the resourcing constraints FSANZ experiences in its efforts to meet its existing objectives. Further, the Department of Agriculture, Water and the Environmental has the appropriate systems and expertise to oversee sustainability policy and regulation, as such Australian Grape & Wine is firmly of the view that an expansion of FSANZ's role into these areas would be unnecessary and potentially damaging to Australia's agriculture sector and the regional communities it underpins.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Australian Grape & Wine fully endorses efforts to support and promote Indigenous culture and food expertise, as both a means to celebrate and preserve cultural heritage, and support improved commercial outcomes that benefit indigenous Australians.

Indigenous Food Culture and expertise of Australian, New Zealand, and other traditional cultures should be recognised to establish a history of safe food use and preclude such food sources being inappropriately misclassified as a Novel Food Ingredient. This would enable innovative food development by Indigenous enterprises and partnerships with other private food producers, enabling such products to be accessible to broader domestic and export markets. For example, there is increasing interest in using Native Australian ingredients and flavours in new foods and beverages, such as the distillation of Whiskey using Native Australian grain sources.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Retaining the status quo, i.e., making no changes to the FSANZ Act, would be a lost opportunity to modernise and strengthen the ANZ Food Regulatory system. Australian Grape & Wine believes that food safety needs to be regulated to minimise the potential impacts of contaminated food both for consumers and supply chain companies. A robust food safety system will underpin confidence in Australian and New Zealand foods and strengthen the global market reputation of our products.
There is also a need to recognise that the shape and structure of the economy is changing. The rise of e-commerce, food-delivery services and new and innovative food and beverage products require a FSANZ act that is well-equipped to deal with food safety challenges posed in the contemporary environment and into the future.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Maintaining exactly the same food regulatory system, without any reforms to modernise some aspects of the system, would entrench the existing structural inadequacies raised by Australian Grape & Wine and other stakeholders, during previous iterations of the FSANZ Review. Our concerns with the current arrangements are:

● Mission creep which has seen FSANZ's functions grow beyond its food safety objectives to include an increasing focus on longer-term, preventive health considerations aimed at personal behavioural change.
● Poor alignment between the priorities of responsible government ministers and the bureaucracy, which is leading to inefficiencies in FSANZ's operations and poor regulatory decisions being made.
● Lack of capability or willingness to provide interpretations of food standards or even develop statements of intent for the Standards to give better guidance to manufacturers.
● Lack of appreciation within FSANZ for the impact of compliance costs on industry.

Furthermore, throughout the RIS, the authors note that resources within FSANZ are stretched and that this is impacting on FSANZ's capacity to efficiently and effectively do its job.

This Review provides an opportunity to drive improved efficiencies through appropriate streamlining of decision-making, providing more information and guidance to industry stakeholders who use the standards, greater emphasis on adopting risk-based approaches to approvals, more effective board structures and better use of technology, and a range of other internal operational improvements. While we believe these types of changes are required, they should be confined to exploring legislative options to deliver a system that focuses on the most efficient and effective way to support FSANZ's current, food safety remit.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Australian Grape & Wine does not have data on hand but would be happy to explore this request with grape growers and winemakers upon request.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Australian Grape & Wine does not have access to costs and benefits (qualitative or quantitative) on delays to new product development, but we were actively involved in the FSANZ P1050 – Pregnancy warning labels on alcoholic beverages proposal, which took an excessively long time to complete (10+ years), and disappointingly, the outcome resulted in a significant financial impact on the wine industry.

By way of reminder, the P1050 mandated a three-colour pregnancy warning label for alcoholic beverages which is estimated to have cost the industry some $400 million according to research commissioned by FSANZ. This includes the initial setup costs of more than $100,000 to hundreds of small brewers, distillers and winemakers across Australia and New Zealand. The vast majority of these costs could have been avoided by adopting the imagery and colour-contrast scheme recommended by the industry, and which is already being used voluntarily on the majority of alcoholic beverages sold across both countries.

The P1050 proposal process highlighted the need to establish a more effective mechanism for FSANZ to assess the financial and technical impacts that Code amendments can have on food and beverage companies. We believe, the food safety regulatory system would be greatly improved by increasing industry engagement (with food and beverages producers), for example via industry representation on consultative committees or increased industry involvement in proposal/applications approval processes.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The outcome of the P1050 proposal which mandated a three-colour pregnancy warning label for alcoholic beverages is estimated to cost the industry some $400 million upon implementation, according to research commissioned by FSANZ. This includes the initial setup costs of more than $100,000 to hundreds of winemakers, small brewers and distillers across Australia and New Zealand.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The risk of maintaining the current food regulatory system, without reforms to modernise it and make it more efficient for suppliers and consumers to navigate, will exacerbate the existing delays and costs to industry. Australian Grape & Wine believes the food regulatory system needs to be modified to make it more efficient and effective for consumers, food and beverage producers and for FSANZ officials themselves, to make sure they can focus on their core business with certainty.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Australian Grape & Wine agrees that FSANZ's work should focus on ensuring that all stakeholders have confidence in the quality and safety of food and the Australian and New Zealand food industry, to reinforce our reputation for safe food in both domestic and export markets and deliver economic benefits, particularly in regional areas where much of the production originates.

However, we do not support the expansion of the objects of the Act to cover "long term, including preventable diet-related disease, illness and disability," nor do we believe that FSANZ's functions/role (as outlined in the Act), should be expanded to explicitly include other project work, such as the Australian Health Survey, Australian Total Diet Survey, development of branded food database, Health Star Review, etc., whether these projects continue to be undertaken by FSANZ or not (given its limited resources as detailed in the draft RIS). As such, broadening FSANZ's role into public health and nutrition, such as promoting "healthy eating" and protecting ANZ consumers from diet-related diseases, should not be included in the reforms of FSANZ Act.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

As noted in our responses above (Question 1 & 2), Australian Grape & Wine does not believe there is a logical or compelling case for FSANZ to play any role in regulating sustainability in agriculture or food and beverage manufacturing.

Sustainability policy issues are already managed by federal, state and territory governments and their departments. Sustainability claims can be backed up by certification schemes (such as the Sustainable Winegrowing Australia program), and sustainability or environmental claims, inter alia, are subject to existing consumer law. Furthermore, these policy settings are rightly set by our elected political representatives in government.

The RIS does not present a compelling case for change or identify a problem that needs to be solved. The RIS does, however, repeatedly refer to the resourcing constraints FSANZ experiences in its efforts to meet its existing objectives. Further, the Department of Agriculture, Water and the Environment has the appropriate systems and expertise to oversee sustainability policy and regulation. As such Australian Grape & Wine is firmly of the view that an expansion of FSANZ's role into these areas would be unnecessary and potentially damaging to Australia's agriculture sector and the regional communities it underpins.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Sustainability in agriculture and food and beverage manufacturing is a critical issue that requires smart and collaborative policymaking from governments and a commitment from businesses to continually strive to conduct themselves in a sustainable manner. This is a focus for grape and wine businesses in Australia. Business owners want to grow grapes and make wine sustainably, not only because consumers and retailers increasingly demand it, but because businesses want to be good stewards of their land, and responsible producers in the community.

However, as noted in our response to Question 1 of this survey, Australian Grape & Wine does not believe there is a logical or compelling case for FSANZ to play any role in regulating sustainability in agriculture or food and beverage manufacturing. Sustainability policy issues are already managed by federal, state and territory governments and their departments. From a wine perspective, sustainability claims can be backed up by certification schemes (such as the Sustainable Winegrowing Australia program), and sustainability or environmental claims, inter alia, are subject to existing consumer law. Furthermore, these policy settings are rightly set by our elected political representatives in government.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Australian Grape & Wine fully endorses efforts to support and promote Indigenous culture and food expertise, as both a means to celebrate and preserve cultural heritage, and support improved commercial outcomes that benefit indigenous Australians.

Indigenous Food Culture and expertise of Australian, New Zealand, and other traditional cultures should be recognised to establish a history of safe food use and preclude such food sources being inappropriately misclassified as a Novel Food Ingredient. This would enable innovative food development by Indigenous enterprises and partnerships with other private food producers, enabling such products to be accessible to broader domestic and export markets. For example, there is increasing interest in using Native Australian ingredients and flavours in new foods and beverages, such as the distillation of Whiskey using Native Australian grain sources.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

As mentioned previously, Australian Grape & Wine supports recognition of Indigenous culture and food expertise and acknowledges that many of these suppliers are regionally based and developments in this sector may provide economic benefits to rural and remote communities. However, we are not in a position to provide any specific insight on the economic opportunities that might arise.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine supports the use of other regulatory instruments, and the use of non-binding guidelines to provide direction to producers on how to meet the obligations of the Code. These could be useful for both industry and enforcement agencies, and it would be helpful if these guidelines were written with small business in mind given, they often do not have the resources or expertise to interpret or implement new or amended, food standards. Further, these guidelines would also help ensure that FSANZ's regulatory solutions are based around the least impact to industry.

While not covered in the draft RIS, Australian Grape & Wine suggested another option in our previous response to the "Aspirations for the Food System discussion paper, submitted in January 2021, with our reference to the concept of a 'labelling advice bureau' or similar type of FSANZ support function to explain compliance requirements on standards. This concept was first canvassed under Recommendation 61 of Labelling Logic: Review of Food Labelling Law and Policy (2011), but never implemented. We believe something like this could be a practical way of addressing compliance questions.

We also support the use of voluntary codes of practice, which could either be developed by FSANZ in partnership with industry or industry representative organisations such as Australian Grape & Wine. Alternatively, FSANZ could recognise industry-initiated codes of practice where relevant. Unlike legislative instruments, codes of practice should not be mandatory or enforceable, but would reflect an agreed approach that has the support or has been adopted, by the majority of industry. These codes can serve as a demonstration of best-practice by businesses and provide a framework for smaller businesses and new entrants to the market.

Australian Grape & Wine is supportive of the adoption of risk-based pathways for regulatory decisions and believes it would deliver internal efficiencies for FSANZ. Risk-based pathways could be used to fast track low-risk, minor variations to food standards, but FSANZ would need to ensure that the objectives around food quality and safety, and an internationally competitive food industry, are not compromised in any way.

Australian Grape & Wine would also support FSANZ recognising and adopting international risk assessments, either as part of an application or proposal verification process, and/or through the automatic adoption (or minimal checks), on new standards or low-risk amendments, that have been approved by an overseas regulator applying comparable rigour in their risk assessment process.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Australian Grape & Wine would not support any move to delegate decision-making away from Food Ministers to the FSANZ Board or Department officials. The Food Ministers' Meeting should continue to set the policy direction for the food standards system, particularly as Ministers are elected by the Australian public for the purpose of representing their interests and bringing a whole-of-government approach to policy decision-making.
However, Australian Grape & Wine would be in favour of FSANZ and the Food Ministers' Meeting implementing a "joint priority setting mechanisms to regularly agree priorities, including both general strategic priorities and priority changes to food standards. This could, for instance, consist of annual planning where

members of FSANZ and the Food Ministers' Meeting come together to agree on the proposals and other project work that will be progressed as part of FSANZ's workplan with a view to removing or abandoning lower priority items", as suggested in the draft RIS (Modernising the FSANZ Act, 10 March 2021, Page 60). This approach also aligns with recommendations from the 2020 Review of COAG Councils and Ministerial Forums.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The Act enables FSANZ to make guidelines and codes of practice. Australian Grape & Wine supports these types of tools to help industry understand the Food Standards and provide direction on how to comply with the Standards. In relation to codes of practice, we would suggest that these are voluntary codes, particularly as they would require ancillary legislation within each regulatory jurisdiction, to make them binding and this may not be feasible or efficient, in the longer term.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

N/A

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

Australian Grape & Wine does not have access to data to demonstrate the potential savings from adopting international risk assessments, but we are supportive of this reform if the international risk assessment originates from a comparable food regulatory system such as European Food Safety Authority (EFSA), etc.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine understands the concept and the potential benefits of time-bound regulatory sandboxes. It would be good to explore this approach further by undertaking one or more pilots, to better understand if potential benefits could be realised.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

N/A

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current arrangements on food safety information gathering and sharing appear to be working effectively. FSANZ re-positioning itself as the engine room of food safety intelligence would likely require an increase in resources. Further, this proposal seems to be tied more to preventive health outcomes and public awareness campaigns rather than FSANZ's core function of ensuring food safety, so the case for this change has not been substantiated. Given FSANZ's limited resources, Australian Grape & Wine believes that FSANZ should not position itself to be the engine room of food safety intelligence, to drive forward looking regulation.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

The draft RIS stated that to some extent, FSANZ already collects and consolidates food safety data on its website. However Australian Grape & Wine does not support FSANZ expanding its function to create consumer-facing food safety educational tools, particularly as this is already the responsibility of the Food Safety Information Council, as such, this would seem to be a duplication of the work of another agency.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

This section of the draft RIS focuses on reforms aimed at enhancing the administrative functions within FSANZ and building its relationships with other government agencies, so it is difficult to see how these reforms would directly underpin food safety or benefit industry. However, there are some comments that Australian Grape & Wine offers on these reforms.

We acknowledge that FSANZ's credibility and status as a trusted entity is derived, in part, from its independence, but if there are opportunities to foster collaborative partnerships with other agencies, that make optimal use of FSANZ's existing expertise and reduce duplication, there may be merit in this reform.

As mentioned in response to Survey Question 17, the October 2020 Review of COAG Councils and Ministerial Forums recommended that collaborative agenda setting might be an important mechanism for the Food Ministers' Meeting to develop its forward workplan. As such, a routine joint priority setting mechanisms to regularly agree priorities, including both general strategic priorities and priority changes to food standards, may be beneficial. However, the Food Ministers Meeting would still need to maintain its policy setting authority.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Australian Grape & Wine notes the statement on pg. 62 of the draft RIS, which indicates that the FSANZ Act already provides for FSANZ to make available its knowledge, expertise, equipment, facilities and intellectual property on a commercial basis.

While we cannot speak for other stakeholders, Australian Grape & Wine does not believe that industry associations should be required to pay for FSANZ services or data, particularly when there is no direct commercial return to the organisation.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine supports improvements in the governance of FSANZ to make it more agile, resilient and fit-for-purpose. The draft RIS proposes streamlining FSANZ's governance through reforms to the composition and selection of a smaller, skills-based Board and moving to virtual Board meetings. While we agree with these suggested changes to the FSANZ Board governance through reforms to the composition and selection of a smaller, skills-based Board and moving to virtual Board meetings. We also believe it is essential that some Board members should have experience in food production businesses to ensure the Board understands the financial and practical impacts of complying with new or changed food standards.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

As outlined in our response on Survey Question 27, Australian Grape & Wine reinforces the necessity for FSANZ Board decisions to take into account the time, cost and complexity of food safety regulation on businesses, to ensure they adopt the least burdensome regulations for industry.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Australia Grape & Wine is not able to provide other costs and benefits that should be measured. However, we note on page 63 of the draft RIS, that while outside the scope of the Review, there may also be an opportunity for FSANZ to consider technology solutions when contemplating labelling requirements in food standards. For example, the increased uptake of QR codes as well as the internet more broadly, provide alternative mediums for some information that has traditionally been presented on a physical label to potentially, be presented on another medium (such as a website). As long as the final approval on this option remained the purview of the Food Ministers, Australian Grape & Wine would support further investigation of the impacts and parameters of this option, particularly as it may deliver benefits to industry, both in terms of reducing labelling costs and providing flexibility to update information as products change or new products are released.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Australia Grape & Wine is not able to provide data on costs and benefits.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Australian Grape & Wine strongly opposes expanding the provisions within the Act to facilitate cost-recovery on industry-initiated work where there is no commercial benefit to the organisation that submits the application. For example, Australian Grape & Wine has in the past submitted applications on behalf of the broader wine industry but there has been no financial gain accrued specifically to our organisation, rather the applications are seeking to improvements for the whole wine industry.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

N/A

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Only as required, which could be characterised as infrequently.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Australian Grape & Wine's most significant barrier when engaging with FSANZ is its unwillingness to provide interpretations or explanatory statements on the Standards in order to provide compliance guidance to producers. This creates significant uncertainty for businesses seeking to comply with FSANZ standards.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Some of these new pathways could help engage with the food regulation system but Australian Grape & Wine's engagement is based on the needs of the Australian wine sector.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine is broadly supportive of changing the Act to give FSANZ broader statutory functions aimed at reinforcing the bi-national nature of the joint food standards system as they relate to ensuring confidence in the safety and quality of our food.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

Australian Grape & Wine does not have access to this type of information.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

The proposal that FSANZ has a statutory function to, either in consultation with states and territories, or on its own initiative, coordinate action and respond to food incidents and food recalls could have benefits particularly in relation to international food exports. Australian Grape & Wine would support this as a shared power with states and territories but would not want it introduced as a replacement of the powers of states and territories.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine supports the inclusion of a statement of intent alongside food standards and, providing industry guidelines on how producers should adhere to food standards would greatly benefit industry and enforcement agencies.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Australian Grape & Wine does not have access to this type of information.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

Australian Grape & Wine does not support expanding FSANZ's remit into the area of enforcement, either with specific enforcement functions for selected food standards, or in the role as a single, bi-national 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.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

See response to Question 41

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Australian Grape & Wine does not have access to this type of information.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Australian Grape & Wine supports FSANZ's input into the international network of standard setters and other expert bodies who work collaboratively to share independent, science-based insights about food safety. We believe that this type of work strengthens the Australian-New Zealand brand, helps work towards harmonisation of international standards and extends our influence in the Asia-Pacific market. As such, we would support FSANZ's legislative remit for this specific function, being expanded to enable it to coordinate a broader programme of international relations and contributions. This would help FSANZ support government policy in forums such as Asia-Pacific Economic Cooperation (APEC).

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Australian Grape & Wine does not have access to this type of information.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Australian Grape & Wine notes the statement on pg. 62 of the draft RIS which indicates that the FSANZ Act already provides for FSANZ to make available its knowledge, expertise, equipment, facilities and intellectual property on a commercial basis. However, it is difficult to support expansion into other cost recovery activities as it would likely decrease the focus on FSANZs main priority which is to provide an efficient food standard-setting system, ensuring stakeholders and consumers are confident in the quality and safety of our food and that this confidence manifests into domestic and export success.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Australian Grape & Wine has provided a letter attached to this survey which summarises our views and priorities for the options presented in the draft RIS.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Australian Grape & Wine's highest priority for the FSANZ Review is to reconfirm FSANZ's existing objects and functions within the Act. While there are some suggested efficiencies that could be implemented within FSANZ's operations, we do not believe these need to be documented within the Act.

We strongly oppose FSANZ extending its remit beyond food safety into areas such as agricultural practice, environmental sustainability and climate change. We also reject any proposal to redefine FSANZ's responsibilities in public health and expand into "preventable diet related disease, illness and disability" which other federal, state and territory agencies already have responsibility for managing.

Of the components listed in the draft RIS our priorities are:
• Facilitate risk-based approaches to developing or amending food regulatory measures
• Build in flexibility to create bespoke regulatory sandboxes
• Streamline FSANZ's governance and operations
• Provide for FSANZ to give greater guidance on food standards
• Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The aspirations for the Food Regulatory System, broadly aligns with most components of the draft RIS.

Australian Grape & Wine notes however, that the first aspiration: Strong leadership and effective partnerships, requires the establishment of efficient mechanisms to support Food Ministers to take a lead role in stewarding the system and resolving challenging policy issues, whereas the draft RIS does not appear to focus on the Food Ministers role but more the internal operations and governance within the FSANZ Authority. We are keen to ensure that the Food Ministers continue to maintain responsibility for developing policy on food safety, so they are well informed to provide direction to the FSANZ Board and its operations.

The aspiration for: Continuous improvement of the system, is positive and appropriate, however it was not clear how the actions listed under this aspiration (i.e., establish mechanisms to enable horizon scanning, risk analysis and emerging issues to better anticipate trends and influence future activities (such as reviews of food standards, policy development, setting strategic directions and priorities); and, proactively monitor and regularly review the performance of all aspects of the system to drive continuous improvement), would be implemented. This does not appear to be clearly articulated in the draft RIS document. This type of aspiration should be a key ambition for any reform program and more information on how this will be realised within the FSANZ review, would be helpful to industry and other stakeholders.

A proposal that is referenced in the draft RIS but is not explicitly covered in Aspirations for the Food Regulatory System document, is the need for FSANZ to collaborate more meaningfully via international partnerships with overseas jurisdictions (including standard-setting bodies and other regulators). Australian Grape & Wine is pleased to see this requirement highlighted in the draft RIS and acknowledges that while FSANZ already has the statutory obligation to have regard to harmonisation of food standards, it does not have the legislative remit to coordinate a broader programme of international relations and contributions, which means its influence is limited. While a reference to broader international partnerships is not explicitly covered in the Aspirations for the Food Regulatory System document, Australian Grape & Wine 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. Ultimately greater recognition or harmonisation with international standards will create new or strengthened, trade channels which will benefit Australia and New Zealand businesses.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
AGW Ltr to Secretariat of FSANZ Act Review 20210601.pdf was uploaded

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1 June 2021

Food Regulation Secretariat
MDP 707
GPO Box 9848
Canberra ACT 2601, Australia
Email: Secretariat@foodregulation.gov.au

Dear Secretariat

RE: *Food Standards Australia New Zealand Act 1991* (FSANZ Act) draft Regulatory Impact Statement.

Australian Grape & Wine has welcomed the opportunity to participate in the public consultation on the Draft Regulatory Impact Statement (RIS) for Modernising the *Food Standards Australia New Zealand Act 1991*. We have responded to the consultation via the online survey tool and our key priorities and concerns are reiterated further below.

We believe that the food industry (which includes grape growing and winemaking in this definition), is extremely important for the economies of regional communities and Australia and New Zealand more broadely. As Australia's premier grape and wine industry representative organisation, Australian Grape & Wine deems it is vital that the legislative powers and operations of FSANZ are efficient, equipped to adapt to new innovations or technologies, and continue to underpin our strong reputation for producing foods which are safe to consume and sell, domestically and globally.

We agree that there is a need for some modernisation of aspects of the FSANZ Act or the operations of the Authority, particlarly given the rise in new food and beverage products, e-commerce and food-delivery services. Some of the proposals outlined in the draft RIS that Australian Grape & Wine supports, include:

- Adding a statement of intent alongside food standards and the provision of industry guidelines to help producers understand how to comply with food standards.
- Streamlining FSANZ Board governance through reforms to the composition and selection of a smaller, skills-based Board and moving to virtual Board meetings. (We also believe it is essential that some Board members should have experience in food production businesses to ensure the Board understands the financial and practical impacts of complying with new or changed food standards).

- Enabling joint priority setting between the FSANZ Board and Food Ministers' Meetings.
- Running pilots to explore the benefits of time-bound regulatory sandboxes.
- Building strategic relationships with comparable international regulators to share risk assessments, food standards or work together to develop new "international" standards. This would also help FSANZ support government policy in forums such as Asia-Pacific Economic Cooperation (APEC).
- Exploring opportunities to adopt new technologies, for example, food labelling information could be provided via QR codes or the internet, so consumers have access to other mediums to obtain adequate information relating to food to help them to make informed choices, besides the traditional physical label.

Conversley, Australian Grape & Wine has concerns with other elements of the the draft RIS, particularly where it is proposing to expand the remit of FSANZ into areas beyond its core object of ensuring consumers have a high degree of confidence in the safety of our food. Our key concerns with the recommendations in the draft RIS, include:

- The proposal to redefine the meaning of 'public health' in the Act, to include "long term, including preventable diet-related disease, illness and disability".
- The suggestion to add environmental sustainability considerations, in terms of the impact of agricultural practices, food processing, distribution and packaging on climate change, biodiversity, soils and waterways, etc. into the objects of the Act. This would overlap into regulatory areas already being managed by other federal, state and territory agencies.
- The proposal to delegate decision-making away from Food Ministers' Meetings would likely dilute Minsterial powers to develop food policy, and potentially lead to unintended negative consequences for the agriculture sector.

Australian Grape & Wine values our engagement with FSANZ and believe our involvement will strengthen the outcomes of this process. We would be happy to outline our concerns in person, if you require more specific details.

Your sincerely

Tony Battaglene
Chief Executive

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 15:01:01**

About you

What is your name?

Name:
Darcie Carruthers

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Zoos Victoria

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Zoos Victoria is a zoo-based conservation organisation committed to fighting wildlife extinction.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Issue – Evidence base: The food regulatory system in Australia and New Zealand does not effectively engage or collaborate with relevant interdisciplinary fields in food sustainability. Robust food system policy should be underpinned by evidence from environmental science, agricultural science, and nutritional science sectors.

Issue – Labelling: There is no labelling system in Australia to support informed choices about the environmental sustainability (or otherwise) of food products and ingredients. The current lack of mandatory and clear labelling laws for vegetable oils is one example of this. Palm oil is the most widely-traded vegetable oil in the world and is associated with high rates of forest destruction across a range of countries and continents where it is grown (Vijay et al. 2016). The International Union for the Conservation of Nature lists palm oil production as one of the main threats facing 193 Critically Endangered, Endangered and Vulnerable species of wildlife. Despite this, palm oil from both unsustainable and certified sustainable supply chains remains hidden on food products due to inadequate labelling requirements.

A recent publication in The Lancet Planetary Health suggests a focus on robust and evidence-based environmental sustainability labelling would support a

sustainable and healthier food system. Yet, Australia and New Zealand continue to fall significantly behind other comparable nations with regards to labelling.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative. As noted in the RIS, the Act would remain inefficient to administer and its cumbersome processes would continue to limit consumer choice .

Retaining the status quo would continue to cause significant issues for the System, primarily because the current objectives and processes are interpreted inconsistently or not adhered to. Their meaning, scope and associated goals are confusing, and their practical application can be challenging.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers:
The risks to consumer choice caused by a continued failure of the food regulatory system to prioritise protection of consumer right to make informed choices. The current limited range of functions and unclear pathways of the System fails to recognise consumer choice, particularly regarding choices that are deemed out of scope by FSANZ. Our sector has witnessed a stalemate on food-related issues such as the mandatory labelling of vegetable oils, deemed out of scope by FSANZ - disregarding years of evidence as being high priority issues for Australian consumers and with strong support from health and environmental experts.

Risks to environmental and food sustainability:
The risk of inaction on environmental and food sustainability issues due to the limited scope of the System to make decisions on such issues. In many cases, issues of health and safety overlap with other issues relating to consumer values around socially responsible and environmentally sustainable sourcing – for example the issue of labelling of fats and oils (including palm oil). A robust food regulation system will assess these issues in their entirety, recognising the true spectrum of factors that relate to public health, rather than limiting reform based on the consideration of only part of the issue.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Overall Option 2, Component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health and environmental sustainability measures. As such, Zoos Victoria strongly opposes the inclusion of trade as a core goal.

Some elements, however, do make a positive contribution.

Zoos Victoria supports the inclusion of sustainability as a core goal of the Act. With the inclusion of sustainability within its remit, the Act would have greater potential to positively influence the interface between agriculture and the natural environment, and to contribute towards the safeguarding of sustainable and responsible food supply chains essential for human health, planetary health, societal security and economic benefit.

It would also empower the food regulation system to respond to issues that have been evidenced as having strong public interest. In an Australia-wide survey of grocery shoppers conducted by Zoos Victoria in 2020, 90% of respondents stated that it is important to them that food products have their ingredients transparently listed. Upon discovering that palm is commonly labelled as 'vegetable oil' on food products, 77% of respondents stated that this made them feel misled as a consumer and 71% stated that this is concerning for the environment. Nearly half a million Australians have lobbied ministers of the Forum asking for clear and mandatory labelling laws for vegetable oils, but the current system has historically rejected these clear and sustained calls for change on the basis that the food regulation system does not develop standards that are based on ecological concerns. As noted in the RIS (3.3.2) stakeholders have communicated that food origins, environmental sustainability and traceability are of current interest to consumers and Australia and New Zealand's food regulation system must respond accordingly.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

Zoos Victoria supports a broad definition of sustainability (environmental, health, economic and social impacts). FSANZ should introduce of a decision-making framework to assess issues of sustainability.

The World Health Organisation asserts that public health and ecological issues are inextricably linked. Under the now widely accepted 'One Health' approach (first used in 2003 during the SARS outbreak to describe the relationship between declining environmental and faunal health with the threats posed by disease to humans and food supplies), environmental and human health are one and the same. As published in the Bulletin of the World Health Organisation "The discourse on non-communicable diseases and human health can no longer be separated from the dialogue on planetary health" (Kandadale, S., Marten, R., and Smith, R., 'The palm oil industry and non-communicable disease', (2018).

Palm oil as an example:
While the direct health impact of saturated fats such as palm oil are widely known and specifically acknowledged in both Australia and New Zealand's national dietary guidelines, the indirect health impacts of unsustainable palm oil production are also worth considering as public health issues.
Unsustainable clearing of land for palm oil plantations by slash and burn practices has led to lessened air quality in some of Australia and New Zealand's neighbouring countries. In 2015, this led to an estimated 100,000 premature deaths in Southeast Asia from increases in pollutants and documented increase in respiratory, eye and skin diseases (World Bank Group, 'An Economic Analysis of Indonesia's Fire Crisis', 2015).

An analysis of oil palm and biodiversity by the International Union for Conservation of Nature (IUCN) found that unsustainable palm oil cultivation can involve "large-scale deforestation, including loss of up to 50% of trees in some tropical forest areas, endangerment of at-risk species, increased greenhouse gas emissions (due to deforestation and drainage of peat bogs); water and soil pollution; and the rise of certain invasive species" (IUCN, 2018).
Such evidence as the above has led the WHO to confirm that the impact of unsustainable palm oil production on planetary health, that is, "the health of human civilisation and the state of the natural systems on which is depends" is well-documented.

Importantly, it also asserts that, as more than two-thirds of the world's palm oil produced goes into food products, the relationship between palm oil and the food industry and how these interconnect with public and planetary health is of significance.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

As noted in the draft Regulatory Impact Statement, consumers and other stakeholder groups are increasingly concerned with the environmental sustainability of food and are exercising their purchasing power accordingly.

The CSIRO predicts that opportunities driven by growth and consumer preference for sustainably-produced foods could be worth $25 billion by 2030. If Australia and New Zealand's food system makes changes to support environmental sustainability, this could result in economic benefits.

Zoos Victoria's own research supports this. In a nationwide survey of 1,098 Australian grocery shoppers in 2020, 83% reported that it was important to them that food brands are environmentally responsible and 74% stated they would switch to a different brand if they found the current brand they purchase from was not acting environmentally responsibly.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The reforms in this component represent a further prioritisation of industry profits ahead of consumer interests, sustainability and public health.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The example given on page 61 of the RIS that Standard 1.2.7 Nutrition, health and related claims have an adverse impact on innovation implies that industry profit is more important than consumer protection.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current decision-making framework is lacking,; the rigid system is unable to adapt to changing consumer expectations and, as stakeholders, we do not receive timely or transparent communication from the food regulation system.

For example, there has been no clear update on a roadmap for effectively dealing with a labelling reform on fats and oils since June 2018. In the last communique on the matter, Forum Ministers acknowledged that ‘consumers’ ability to identify saturated and/or mono and polyunsaturated fats in food is limited due to a lack of labelling information’. Government bodies, including FRSC, were charged with progressing and providing advice to the Ministers by mid-2019.

This is a significant issue for invested stakeholders and the thousands of members of the public who have clearly expressed their keen interest in timely action on this health-related and environmental issue. Yet they are left with no information and no justification for a stall in progress.

Currently, now in mid-2021, it is completely unclear at what step in the process this labelling recommendation is at and there is not accountability for this. It can only be assumed to have stalled completely.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ Is not appropriately resourced to take on this responsibility.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2, Component 1 is Zoos Victoria's highest priority - (legislative changes to clarify the objectives and functions of FSANZ) would create a clear direction for the future.

FSANZ should be able to take into account a wider range of factors related to the food industry, including environmental sustainability. This would provide a clear remit for dealing with such issues, rather than allowing them to fall through the cracks and stagnate as is the current status quo. It would also better cater to consumer expectations and allow consumers to make more informed choices based (albeit not solely) on the environmental impacts of the foods they purchase.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. The aspirations are public health-focused and the options presented will not enable the aspirations to be met.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 15:12:44**

About you

What is your name?

Name:
Health Coalition Aotearoa Food Policy Expert Panel

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Health Coalition Aotearoa

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Health Coalition Aotearoa is a coordinating, umbrella organisation for individual health experts and about 50 health and consumer NGOs, health professional associations, and academic groups. HCA benefits the community by promoting health for all New Zealanders, especially through the prevention of harm from tobacco, alcohol and unhealthy foods (as defined by the World Health Organisation). Our mission is to provide a collective voice and expert support for effective policies and actions to reduce harm, through a focus on the determinants of health.

This submission draws together views held by members of the Health Coalition Aotearoa (HCA) Food Policy Expert Panel. Health Coalition Aotearoa members may have additional or other views, which they may provide through separate submissions.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: 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, and the provision of adequate information to enable consumers to make informed choices.

We know that, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness -- and this protection must be maintained. New Zealanders are not, however, effectively protected from long-term health impacts linked to food. One in three of New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably with those adults living in the most socioeconomically deprived areas being 1.8 times as likely to be obese as adults living in the least deprived areas and the prevalence of obesity among adults differs by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult

obesity rate in the OECD with the rates continuing to increase. The proportion of morbid obesity represents as much as 70-80% of this obesity growth.

Most New Zealanders have poor diets. For example a recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%). In New Zealand according to the Ministry of Health it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.
Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
able to be independently verified by reference to clear and consistent standards
not used to promote foods that are unhealthy

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. While we do support the need for change and reform out of the three options provided in the RIS, Option 1 is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve “less regulatory intervention and associated regulatory burden”, as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone the current system, which the draft RIS acknowledges has “managed to largely prevent the market failures that they are designed to address” represents a better outcome. We are concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in our view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

- The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian/New Zealand context before adoption. We support the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

- The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health

Key risks to consumers and to public health in retaining the status quo are:

- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

- The health and economic risks caused by the impact of the food regulatory system on - the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Risks to government
A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. The cost of obesity in New Zealand has been estimated at more than $624 million a year. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Risks to industry

We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

We note that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach cannot be used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.
As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:

Costs

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
- 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
-The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
-The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.
This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent proposal in Australia 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 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 a few months 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 New Zealand 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and non-communicable diseases in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.
Key risks to consumers and to public health in retaining the status quo are:

- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

- The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.

-The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.
The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

We are concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.
We discuss specific components in turn:

Objects and factors to which FSANZ must have regard

1.Clarification of definition of public health

We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health

elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

We strongly oppose this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.
The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

We support the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

We support the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions

We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.
We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers' hands.
We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.
Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.
The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests

and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

No response

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No response

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.
We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to

complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.
We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals

In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:

- Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
- While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
- We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting

We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.
We consider it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks

We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.
FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

We note that in addition to an 'automatic adoption' approach, the RIS proposes a 'minimal checks' pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.' It is difficult to fully assess this without detail of what these 'minimal assessments' will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways
We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts:

We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this.

Changing FSANZ Board arrangements

We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.
We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions

We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the food industry, while placing the burden of risk, both from a health and economic perspective on individual Australia and New Zealand consumers and on health system of both countries.
The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.
Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:

The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.

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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.

The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

Costs and benefits of Component 1

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have 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 RIS of the impact of the proposed reforms on public health outcomes.
We know how many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in New Zealand. We also have data on the economic costs of obesity, including costs borne by individual New Zealanders and by governments.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS can, however, quantify the economic and health costs of a slight change in these levels. The cost of obesity in New Zealand has been estimated at more than $624 million a year. The latest and only estimate of the cost of productivity loss from obesity to New Zealand by Lal et al. (2012) estimated that in 2006 the total cost lay between $98m to $225m. Since 2006, the prevalence of adult obesity has increased from 26% to 31%.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and

higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.
If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.
The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.
We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don’t allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ’s functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We are concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

no response

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards

We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine

We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No response

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.
The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its

objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealanders. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
- Set statutory timeframes for proposals.
- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the jurisdictions.
- Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
None. We do not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, we do not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3

None We do not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

WE consider the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)

2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability

3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of

the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:

- Include an additional aim the ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/NZ for all Australians/New Zealanders.

- Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.

- Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

Analysis of RIS Options against Vision and Aims of the draft Aspirations for the Food Regulatory System

Analysis of the VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.
- Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting Australians and New Zealanders from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
- Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
-- reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;
-- remove safeguards resulting in less focus on improving and protecting safety;
elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
-- fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;
-- fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.

Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:

-- centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
-- focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

Analysis of Aim 1: to protect the health and safety of consumers by reducing risks related to food

- As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.
-- Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect of the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
-- Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
-- Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

Analysis of Aim 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled
-- Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.
-- Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

Analysis of Aim 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues
-- Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals "often have system-wide impacts" (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
-- Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it

removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

Analysis of Aim 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand
-- Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all Australian and NZ governments.

-- Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will, however, result in an even greater economic burden from chronic disease on both consumers themselves and all Australian and NZ governments and will have increasingly damaging impacts on health and environmental sustainability.

-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the immense economic burden of chronic disease on consumers themselves and all Australian and NZ governments.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 15:15:28**

About you

What is your name?

Name:
University of Auckland Faculty of Medicine and Health Sciences Public Health Nutrition Group

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
University of Auckland Faculty of Medicine and Health Sciences Public Health Nutrition Group

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

We are a group of academics working in public health nutrition at the University of Auckland's Faculty of Medicine and Health Sciences, from a range of disciplines including dietetics, food policy, epidemiology and nutrition.

Fiona Sing
Prof Boyd Swinburn
Dr Helen Eyles
Dr Sally Mackay
Dr Rajshri Roy
Dr Leanne Young
Dr Kathryn Bradbury
Dr Kelly Garton

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: 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, and the provision of adequate information to enable consumers to make informed choices.

We know that, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness -- and this protection must be maintained. New Zealanders are not, however, effectively protected from long-term health impacts linked to food. One in three of New Zealand adults are obese

according to the Ministry of Health. Although this is experienced inequitably with those adults living in the most socioeconomically deprived areas being 1.8 times as likely to be obese as adults living in the least deprived areas and the prevalence of obesity among adults differs by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult obesity rate in the OECD with the rates continuing to increase. The proportion of morbid obesity represents as much as 70-80% of this obesity growth.

Most New Zealanders have poor diets. For example a recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%). In New Zealand according to the Ministry of Health it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.
Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
able to be independently verified by reference to clear and consistent standards
not used to promote foods that are unhealthy

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve “less regulatory intervention and associated regulatory burden”, as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone the current system, which the draft RIS acknowledges has “managed to largely prevent the market failures that they are designed to address” represents a better outcome. We are concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in our view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

-- The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian/New Zealand context before adoption. We support the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

-- The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health

Key risks to consumers and to public health in retaining the status quo are:

-- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

-- The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

-- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Risks to government

A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. The cost of obesity in New Zealand has been estimated at more than $624 million a year. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Risks to industry
We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

We note that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach cannot be used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:

Costs
The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.

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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.
Case Study: Pregnancy warning labels on alcohol
The recent proposal in Australia 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 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 a few months 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 New Zealand 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 New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and non-communicable diseases in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.
The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

Key risks to consumers and to public health in retaining the status quo are:

-- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.
-- These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
-- The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.
-- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative outcome.
We do not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.
The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

We are concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

We discuss specific components in turn:

Objects and factors to which FSANZ must have regard

1.Clarification of definition of public health
We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health

elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

We strongly oppose this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

We support the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

We support the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

5. Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions

We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers' hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.

We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

na

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.
Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

na

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.
We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals

In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:

Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.
This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.
We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.
It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.
When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting

We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.
There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process.
Any new decision-making process should also be subject to review after a period of operation.
We consider it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.
We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks

We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

We note that in addition to an 'automatic adoption' approach, the RIS proposes a 'minimal checks' pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.' It is difficult to fully assess this without detail of what these 'minimal assessments' will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.
We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers.
Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways

We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts:

We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this.

Changing FSANZ Board arrangements

We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.
We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.
Investment into business solutions

We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the food industry, while placing the burden of risk, both from a health and economic perspective on individual Australia and New Zealand consumers and on health system of both countries.
The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.
Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.
This analysis must include:

--The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over

proposals with public health benefit, this is unlikely to improve.
--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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.

-- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers
Costs and benefits of Component 1

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have 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 RIS of the impact of the proposed reforms on public health outcomes.

We know how many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in New Zealand. We also have data on the economic costs of obesity, including costs borne by individual New Zealanders and by governments.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and 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 RIS can, however, quantify the economic and health costs of a slight change in these levels. The cost of obesity in New Zealand has been estimated at more than $624 million a year. The latest and only estimate of the cost of productivity loss from obesity to New Zealand by Lal et al. (2012) estimated that in 2006 the total cost lay between $98m to $225m. Since 2006, the prevalence of adult obesity has increased from 26% to 31%.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don’t allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ’s functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We are concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No response

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards

We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine

We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No response

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.
The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealanders. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:

-- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
-- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
-- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
-- Set statutory timeframes for proposals.
-- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the jurisdictions.
-- Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
None. We do not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, we do not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3
None We do not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).
WE consider the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)
2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability
3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:
Include an additional aim the ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/NZ for all Australians/New Zealanders.
Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.

Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

Analysis of RIS Options against Vision and Aims of the draft Aspirations for the Food Regulatory System

Analysis of the VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.

Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting New Zealanders from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;
remove safeguards resulting in less focus on improving and protecting safety;
elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;
fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.

Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:
centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

Analysis of Aim 1: to protect the health and safety of consumers by reducing risks related to food

As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.
Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect of the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

Analysis of Aim 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.
Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

Analysis of Aim 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals "often have system-wide impacts" (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

Analysis of Aim 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand

Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all NZ and Australian governments.
Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will, however, result in an even greater economic burden from chronic disease on both consumers themselves and all NZ and Australian governments and will have increasingly damaging impacts on health and environmental sustainability.

Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the

immense economic burden of chronic disease on consumers themselves and all NZ and Australian governments.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 15:36:40**

About you

What is your name?

Name:
Aimee Brownbill

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Foundation for Alcohol Research and Education

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
ACT

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Foundation for Alcohol Research and Education (FARE) is a not-for-profit organisation working towards an Australia free from alcohol harms. Together with values-aligned organisations, health professionals, researchers and communities across the country, we develop evidence-informed policy, enable people-powered advocacy and deliver health promotion programs.

Far too many Australians are impacted by alcohol harm in Australia. Nearly 6,000 lives are lost every year and more than 144,000 people hospitalised, making alcohol use one of our nation's greatest preventive health challenges (1). Alcohol use is causally linked to over 200 disease and injury conditions (2). The estimated cost of alcohol harm to Australia is $36 billion every year (3).

Alcohol is captured within the food regulatory system. The effective regulation of alcohol is essential to ensuring that alcohol harm is prevented and Australians remain healthy, safe and well. FARE's submission focuses on the need for alcohol to be comprehensively regulated within the food regulatory system and to ensure that public health outcomes are prioritised ahead of industry commercial interests.

FARE support the submission of the Obesity Policy Coalition, The George Institute for Global Health and Cancer Councils and many of our responses reiterate their positions.

1. Lensvelt E, Gilmore W, Liang W, Sherk A, T. C. Estimated alcohol-attributable deaths and hospitalisations in Australia 2004 to 2015. Perth: National Drug Research Institute, Curtin University, 2018.
2. Rehm J, Gmel GE, Gmel G, Hasan OSM, Imtiaz S, Popova S, Probst C, Roerecke M, Room R, Samokhvalov AV, Shield KD, Shuper PA. The relationship between different dimensions of alcohol use and the burden of disease—an update. Addiction. 2017;112(6):968-1001.
3. Foundation for Alcohol Research and Education. About alcohol's $36 billion cost. Canberra: FARE; 2011 [cited 2021 May 20]. Available from: https://fare.org.au/wp-content/uploads/36-Billion.pdf.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider that, in its current form, the Act 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, and the provision of easily accessible and interpretive information about risks to health to enable people to make informed choices. This policy problem applies to both Australia and New Zealand. The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. The current system prioritises profits of the alcohol and food industry and does not effectively protect public health as it fails to address long-term health and preventable diet-related disease. The RIS states that the status quo proposed involve “less regulatory intervention and associated regulatory burden” and it is clear that this will come at a cost to individuals, communities and governments. However, neither Options 2 nor 3 presented in the RIS will produce better public health outcomes and Option 1 does not enshrine the new and harmful mechanisms proposed through Options 2 and 3 which may threaten the health of the community.

The current system mostly takes a proactive and preventative approach in its requirement for products to be assessed as safe before approval, and for standards to be fully assessed in the Australian context before adoption. While predominantly oriented toward immediate food safety risks, the proactive and preventative approach must be retained in the food regulatory system and should be extended to consider safety in terms of long-term health outcomes.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to community and public health: The key risks to the community and to public health in retaining the status quo are the increased experience of preventable illness and diseases and the subsequent economic consequences of this. When the food regulatory system fails to prioritise long-term public health issues, these risks are extremely likely and will result in significant consequences for both individual Australians and the Government. The RIS must be amended to include detailed assessment of these risks. This includes the health and economic risks caused by delays in progressing public health proposals under the current system which can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform (examples and more detail provided in subsequent sections).

Risks to Government: A key risk to Government is the significant cost of the high level of chronic illness, non-communicable disease and other related harms in the Australian community. For example, alcohol related harm costs Australia an estimated $36 billion every year.3 The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity).4 These risks must be addressed and quantified in the RIS analysis.

Risks to industry: The primary focus of risk assessment in the RIS should be on the short- and long-term costs borne by Government and the Australian community, which are substantial. We acknowledge that alcohol and processed food companies may incur some costs under the current system, however, these should not be prioritised over health outcomes. Additionally, we do not accept the quantification of the costs to industry presented in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. This is likely to lead to a significantly exaggerated cost. The RIS must use independent economic data that is applied to real world figures and not costings provided by the food or alcohol industry as this is not independent nor verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

No. We note, as above, that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes. The RIS must assess in detail, the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and preventable illness and disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Option 1 must consider the health and economic costs borne by the Australian community and governments due to delays or failure to implement food regulatory measures that address long-term public health matters, including preventable illness and disease, and the administrative cost to public health and community organisations of participating in lengthy and delayed processes to review and amend food standards. Option 1 must also consider the health and economic benefits borne by the Australian community and governments of the current system that largely assesses that products are safe before they are put on the market.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes. The cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system. Pregnancy warning labels on alcohol provide an example of this. This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for Options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent 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 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 a few months 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 Fetal 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 of 1.18% of cases, 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.

When considering these costs, the almost two year delay of the work on mandatory pregnancy labelling came at a high cost to the government and to the Australian community. The costs are tremendous when also considering the inaction on effective mandated labelling. It was ten years between the COAG Review of Food Labelling Law and Policy recommending mandatory pregnancy warning labels and these labels being mandated, despite longstanding evidence on the risk to the developing fetus when alcohol is used during pregnancy. This occurred because industry-led self-regulatory models failed.

The RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for Options 2 and 3 – with analysis for those options assessing the impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels would have been 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The protection of short- and long-term health and the provision of easily accessible, honest, and interpretative information about alcoholic products is in the interest of the wider community and is an interest strongly represented by public health experts. The risks to the community and public health outcomes are adversely linked to the prioritisation of industry interests ahead of people's health, which is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 2, Component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures. Some small elements of this component, however, do make a positive contribution.

Objects and factors to which FSANZ must have regard:
• Clarification of definition of public health: We agree that the definition of public health should be clarified to include both short- and long-term health, including the prevention of diet-related disease.
• Inclusion of trade as a core goal: We strongly oppose this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.
• Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard: We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

FSANZ functions:
• We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.
• We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.
• We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key focus of FSANZ.

Costs and benefits of Component 1:
• We do not agree with the statement in the RIS that there is a clear net benefit to Component 1, and that the proposed changes would not impose any costs on stakeholders. The cost/benefit assessment for Component 1 does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to health and the economic cost for government.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The combination of reforms in this component represent a significant shift to a system that even further prioritises industry profits ahead of public health and shifts the burden of risk onto the Australian community.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the Aspirations for the food regulatory system which state the Ministers will lead the meeting of Aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Any regulatory instrument implemented must be government led and mandatory; we do not support voluntary or industry-led food regulatory measures as these have long shown to be ineffective at achieving public health outcomes (5).

5. Pierce H, Stafford J, Pettigrew S, Kameron C, Keric D, Pratt IS. Regulation of alcohol marketing in Australia: A critical review of the Alcohol Beverages Advertising Code Scheme's new Placement Rules. Drug and Alcohol Review. 2019;38(1):16-24.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No. However, we reassert that that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

No. However, we reassert that that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the alcohol and food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the alcohol or food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting: We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how public health stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts: We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards. Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and community organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Changing FSANZ Board arrangements: We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board.

Investment into business solutions: We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to people on the physical label.

New cost-recovery mechanisms for industry-initiated work: We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australians and on Australia's health system. The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable people to make informed choices. Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the alcohol and processed food industry to sell more products that are harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes. The RIS must assess in detail, the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and preventable illness and disease. These costs are borne by individual Australians and by governments.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
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The primary focus of risk assessment in the RIS should be on the short- and long-term costs borne by Government and the Australian community, which are substantial. For example, alcohol related harm costs Australia an estimated $36 billion every year (3). The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity) (4).

3. Foundation for Alcohol Research and Education. About alcohol's $36 billion cost. Canberra: FARE; 2011 [cited 2021 May 20]. Available from: https://fare.org.au/wp-content/uploads/36-Billion.pdf.
4. PwC Australia. Weighing the cost of obesity: A case for action. Australia: PwC Australia; 2015 [cited 2021 May 20]. Available from: https://www.pwc.com.au/publications/healthcare-obesity.html.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to the Australian community and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the alcohol and food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the alcohol and food industry. We do, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system. The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large alcohol and food companies who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long-term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must

include a specific public health review process and a review process for the community, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and community organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms. The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the States or Territories or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

No. We assert that consumer safety and public health should be prioritised over commercial interests.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this. 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.

In relation to the specific guidance mechanisms flagged in the draft RIS:
• Statement of intent alongside food standards: We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.
• FSANZ to update and maintain industry guidelines: Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led. Industry should not have a role in developing the guidance provided by FSANZ.
• Ministers to determine whether a product is a food or a medicine: We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the Acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single Minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
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Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage. We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further de-prioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. The RIS must assess this cost, both to long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No. The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing the Australian community with adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and community organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables people to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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.

Policy approaches that would address this policy problem include, but are not limited to:
• Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
• Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
• Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
• Set statutory timeframes for proposals.
• Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
• Undertaking a review of the health and nutrition claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health and nutrition claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2: None. We do not think any of components (1-6) should be pursued, and certainly not prioritised. Whilst there are some minor elements of some of the components of Option 2 that could be implemented, we do not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health.

Option 3: None. We do not think any of components (1-4) should be pursued, and certainly not prioritised. Whilst there are minor elements of some of Component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. The Aspirations are very public health focused and the options presented in the RIS will not enable the Aspirations to be met. None of the options provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
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Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 16:32:54**

About you

What is your name?

Name:
Dr Sandro Demaio

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Victorian Health Promotion Foundation (VicHealth)

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

VicHealth was established as a statutory body of the Victorian Government in 1987 and we have over 30 years' experience in promoting health. We know there are barriers to good health and wellbeing for people in our community, and we work with partners to discover, implement and share solutions to these challenges. We understand how changes in the environment can promote health and draw on practices that ensure we achieve the best outcomes for those who need it most.

A core part of our work is ensuring all Victorians can eat a healthy, balanced diet, which includes a focus on supporting policy reform. For more information, see www.vichealth.vic.gov.au.

Please note that VicHealth endorses and closely aligns with the Obesity Policy Coalition's submission and recommendations to this consultation. VicHealth is a partner of the Obesity Policy Coalition, along with Cancer Council Victoria, Diabetes Victoria and The Global Obesity Centre (GLOBE) at Deakin University.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS aims to fulfil the Terms of Reference of the FSANZ Act review, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

The RIS has not considered the following policy problems that apply to both Australia and New Zealand:
(a) 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.

(b) The Act in its current form does not enable the food regulatory system to meet another of its primary objectives: the provision of adequate information to enable consumers to make informed choices.

To fulfil the review's Terms of Reference, it is critical that the RIS recognises and analyses those problems, and VicHealth recommends that the final RIS is amended so that it does so. We also recommend that this incorporates a health equity lens and analyses differential impact of proposed reforms. As a regulatory tool, the Act has the potential to have the most benefit for Australians experiencing greater barriers to healthy diets and achieving good health.

Currently, the RIS does not adequately consider the health and economic impacts of poor diets. These can lead to overweight and obesity, type 2 diabetes, cardiovascular disease and cancer, with poor diet contributing 7.3% to the Australian burden of disease. The vast majority of Australian adults and children have poor diets, with more than a third of daily energy intake coming from unhealthy food. Around two-thirds of Australian adults and a quarter of Australian children are above a healthy weight, with overweight and obesity contributing a further 8.4% to the burden of disease in Australia. There are significant inequities in poor diet and overweight and obesity, with Australians from lower socioeconomic areas, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas more likely to be above a healthy weight. Together these risk factors account for the greatest burden of disease in Australia. In addition, 47.8% of Australian adults exceed the World Health Organization's recommendation for free sugar intake, and 90% of Australians over 15 years old have experienced dental decay in their permanent teeth.

VicHealth recommends that the final RIS and resultant review of the Act aligns with other government strategies, such as the National Preventive Health Strategy and the National Obesity Strategy. It must also align with the current priorities of the food regulatory system itself (i.e. supporting the public health objectives to reduce chronic disease related to overweight and obesity) and government policy statements on the role of FSANZ, which identify the role of food regulation in preventing and reducing disease, illness and disability.

Importantly, the final RIS must recognise that food regulatory arrangements should prioritise public health over industry interests, particularly industries that manufacture harmful products including unhealthy foods and beverages. This should be reflected in the way FSANZ considers applications, so that proposals to benefit public health are prioritised over industry applications. A fit-for-purpose system must be provided for public health bodies to seek amendment and introduction of food standards, and ensure the food industry is not permitted to self-substantiate evidence of health claims.

The current food regulatory system has been successful in ensuring Australians are protected from short-term food-borne illness. This protection must be maintained, but long-term health outcomes must be addressed alongside short-term public health issues.

Under the final RIS, any proposed changes and amendments considered under the FSANZ Act review must be assessed against public health needs. Despite the draft RIS noting that its analysis includes consideration of regulatory impacts for four key stakeholder groups (including public health), VicHealth believes that it currently does not meet this objective for public health, as compared to the impacts on the food industry.

We are not in a position to provide a response from a New Zealand perspective specifically but expect that these issues are equally relevant for both jurisdictions.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Currently, the food regulatory system does not include standards to confirm the accuracy of claims manufacturers make about sustainability. This means that consumers are limited in their ability to make informed choices about the sustainability of the foods they purchase.

Any measure to incorporate sustainability into the food regulatory system must establish a strong evidence-based system to ensure claims about sustainability:
(a) can be independently verified by reference to clear and consistent standards
(b) are not used to promote foods that are unhealthy overall.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

VicHealth recommends that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this is extended to include assessment of how food regulatory measures affect Aboriginal and Torres Strait Islander people more generally. The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short- and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

We recommend that the Department consults directly with Aboriginal and Torres Strait Islander organisations in Australia and with M■ori tangata whenua of New Zealand on this issue.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

VicHealth fully supports a strong, effective food regulatory system that protects the health of all Australians. We agree with the statement in the RIS that the Act is dated and that its effectiveness is diminishing. For this reason, we believe retaining the status quo represents a negative outcome for public health. However,

VicHealth recognises that it is a better option than Options 2 and 3 as they relate to public health outcomes.

Importantly, the current system prioritises the profits of the food industry above the health and wellbeing of Australians. It fails to protect consumers from long-term health effects linked to poor diet.

Key failings of the current system are as follows:
(a) Paid industry applications to modify standards are prioritised ahead of proposals that are likely to have public health benefit, resulting in significant delays in progressing public health measures.
(b) The Act does not provide a clear and practical pathway that is designed for public health organisations to seek timely amendments to standards that address long-term public health issues. This means that key public health issues are not considered at all or that Australia falls significantly behind best practice.
(c) The approach to regulating and enforcing health claims is inadequate, as it relies on industry self-substantiation and is not effectively and consistently enforced.

As noted above, the current system prioritises industry interests ahead of public health. However, Options 2 and 3 outlined in the RIS shift this balance even further, so that industry profits are prioritised above the health of Australians to an even greater extent, which will have significant implications on poor diet and overweight and obesity. Options 2 and 3 enable the processed food industry to sell and promote more ultra-processed foods that are harmful to health with less oversight, as well as increase barriers to public health reform and centralise decision-making. This significantly undermines the integrity of a joint food regulatory system.

VicHealth recommends the retention and improvement of a preventive approach that assesses impacts to short- and long-term health and safety before food is allowed to be sold. We do not support a system that is responsive and only intervenes to prevent harm after it has occurred. As the draft RIS notes, a system that requires industry to demonstrate that substances are safe before they can be used is the most effective system of harm prevention.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

RISKS TO CONSUMERS AND PUBLIC HEALTH
Key risks to consumers and to public health in retaining the status quo are:
(a) the health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including poor diet, preventable diet-related disease and dental health. These risks include overweight and obesity, dental decay and diet- and weight-related preventable disease. These risks are often linked to weakened or non-existent regulatory measures that protect public health and improve labelling. The final RIS must be amended to include detailed assessment of these risks
(b) the economic risks caused by this failure, as poor diet, overweight and obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments. The final RIS must also be amended to include detailed assessment of these risks
(c) the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This should be compared to an analysis of the economic impacts of an improved food supply and a reduction in preventable diet-related disease
(d) the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. More detail is provided in our response to question 8
(e) the health and economic risks of limited or confusing information on product packaging that reduces consumers' ability to make informed choices.

RISKS TO GOVERNMENT
A key risk borne by government is the significant economic cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these risk factors. The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity). Poor diet also contributes to economic costs related to dental health. A food regulatory system that prioritises industry profits over public health will increase the cost for governments in the short- and long-term. These economic and health risks must be addressed and quantified in the RIS analysis.

RISKS TO INDUSTRY
VicHealth acknowledges that processed food companies may incur some costs under the current system due to application process requirements and approval delays. However, we do not agree with the quantification of those costs in the draft RIS. We are concerned that, in multiple instances (e.g. p.71), the RIS incorporates costings self-reported by one industry stakeholder without further analysis, and then extrapolates that cost across the whole industry to arrive at a figure that we believe represents a significantly exaggerated cost. We request that the final RIS uses independent economic data that is applied to real world figures rather than costings provided by the processed food industry, as this is not independent or verifiable and presents significant conflicts.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

VicHealth recommends that the final RIS uses an assessment of the cost to industry of delays in bringing products to market that is independently verifiable and not based solely on industry-reported data. As noted in our response to question 5, the current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the final RIS must also assess the cost of delays in processing proposals for public health measures. For further detail see our response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The RIS must assess in detail the qualitative and quantitative impact of Option 1 on public health, in particular the health and economic costs and benefits to long-term public health and preventable diet-related disease.

The draft RIS states that its analysis draws out the regulatory impact for four key stakeholder groups, including public health. However, it repeatedly fails to analyse the regulatory impact for public health. The draft RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost–benefit analysis throughout the draft RIS is incomplete and inaccurate. The final RIS must be revised to include this analysis.

Costs and benefits that must be considered for Option 1 include the following:

COSTS
(a) The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to improve public health. This can be assessed by referring to the costs saved and health risks reduced by existing public health measures that were delayed under the current system. A case study on this topic is provided in our response to question 8.
(b) The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health outcomes. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests above public health.
(c) The administrative costs to public health and consumer organisations due to participating in lengthy and/or delayed processes to review and amend food standards.
(d) The economic costs borne by industry for productivity loss, sick leave and staff turnover as a result of preventable diet-related diseases.

BENEFITS
(a) 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.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The cost of delays and barriers to implementing public health measures can be assessed by considering assessments of the economic and health impacts of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented. Analysis for Options 2 and 3 must consider the likely effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make it more difficult to implement public health measures or result in measures that are weaker and do not reflect best practice.

CASE STUDY: PREGNANCY WARNING LABELS ON ALCOHOL PRODUCTS
The recent proposal for pregnancy warning labels on alcohol products 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 products should be developed and asked FSANZ to develop it as a priority. It took almost two years for this work to be completed, with Ministers accepting a proposed draft standard in July 2020.

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. The DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at A$1.18 billion per year in Australia and NZ$171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at A$75,662. The DRIS could not 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 A$13.8 million, while the health impact is 183 additional individuals living with FASD.

The RIS 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, due to the increased importance given to trade and regulatory impact concerns. This brings with it a significant health and economic cost, as outlined above.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short- and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are often linked to the prioritisation of industry interests ahead of the health of consumers. Key risks to consumers and to public health in retaining the status quo are as follows:
(a) There are significant health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including poor diet, overweight and obesity, preventable diet-related disease and dental health. These health risks and impacts are inequitably distributed across the population and are more likely to be experienced by lower socioeconomic groups, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas. These risks are linked to weakened or non-existent regulatory measures to protect public health and to ensure mandatory food labelling is implemented so consumers can make informed choices that benefit their diet and health.
(b) These health issues are also linked to economic risk, as overweight and obesity and preventable diet-related disease, including dental health, lead to economic costs both for individuals and for governments. These risks are not identified in the draft RIS.
(c) There are risks to the food supply related to the food regulatory system, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and preventable diet-related disease.
(d) There are health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

VicHealth strongly recommends that the RIS is amended to include detailed assessment of these risks.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 2, Component 1 further increases the prioritisation of industry interests over public health. Strengthening trade and regulatory impact considerations is likely to act as an increased barrier to the implementation of public health measures and does not align with the objectives of the Act. Some minor elements, however, do make a positive contribution. Positive and negative elements are discussed below.

OBJECTS AND FACTORS TO WHICH FSANZ MUST HAVE REGARD
1.Clarification of definition of public health:
VicHealth agrees that the definition of public health should be clarified to include both short- and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition; however, we recommend that it be amended to delineate between short- and long-term health and include these two elements as distinct and equally-prioritised objects and objectives in both s.3 and s.18 of the Act. VicHealth recommends that these elements are subject to dedicated funding, resourcing and strategic planning. The Act is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal:
VicHealth strongly opposes this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary, and it will increase barriers to food regulatory measures that will promote and protect public health. The draft RIS notes that the status quo (which does not include trade as a core objective) has delivered good trade outcomes over many years. This has been achieved due to FSANZ's mandate to have regard to an efficient and internationally competitive food industry, and promote consistency between domestic and international food standards when making decisions. The proposed change will further enable the processed food industry to challenge public health measures and will increase barriers to Australia adopting innovative public health interventions. This will create a system where Australia lags behind in public health protection, when the draft Aspirations of the Food Regulation System identifies the goal of becoming 'a world-class system'.

Trade must remain as a lower priority than all objectives of the Act, not only to the primary goal of public health protection, but also to the objectives of providing 'adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability:
VicHealth supports the inclusion of food sustainability as a core goal of the Act. However, in doing so it is critical that sustainability cannot be used opportunistically by the food industry in a way that prioritises profit over public health. For example, the Act must ensure that the processed food industry cannot use sustainability as a way to promote unhealthy foods that have a negative impact on health, such as through marketing unhealthy foods as being produced sustainably or having low environmental impact. There must also be a clear framework to independently assess sustainability claims. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability claims must not be permitted.

4. Indigenous culture and expertise:

VicHealth supports the inclusion of indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products. We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander and M■ori organisations.

5. Including the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard:
VicHealth strongly opposes the inclusion of the regulatory impact on industry, particularly small businesses, as a factor to which FSANZ must have regard when setting food standards. This factor will create a barrier to implementing changes to food standards that protect public health. In addition, the impact of regulation on businesses is already considered by FSANZ as part of its process in developing and amending food standards, meaning this factor does not need to be strengthened further given its negative impacts on public health.

5. Further changes to s.18 and the role of FSANZ:
We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s.18. We do not support any amendment that enables FSANZ to extend Australia and New Zealand's influence internationally.

FSANZ FUNCTIONS
VicHealth supports changes to FSANZ's functions to align with the objectives of the Act, subject to our comments above. We also support the inclusion of FSANZ's functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS, the Food Ministers' Meeting is the 'body that sets the policy direction for the joint food standards system', and this role should remain Food Ministers' responsibility.

We do not support a broad extension to FSANZ's functions in food fraud or undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues, but they should not be a key focus of its work.

ESTABLISHING CRITERIA IN THE ACT THAT THE FOOD MINISTERS' MEETING MUST MEET TO REQUEST A REVIEW OF A DRAFT REGULATORY MEASURE
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure. We recommend that the Food Ministers' Meeting has the ability to request a review of a draft regulatory measure if it decides that FSANZ did not adequately consider one of its objectives or factors to which it must have regard, including Ministerial policy guidelines. The Act should also include clear procedural steps that must be met, including that the Food Ministers' Meeting should explain how it decided FSANZ failed to properly consider its objectives and factors to which they must have regard.

COSTS AND BENEFITS OF COMPONENT 1
We do not agree with the statement in the draft RIS that there is a clear net benefit to Component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost–benefit assessment for Component 1 is not comprehensive. It does not consider any health or related economic costs associated with the elevation of trade and regulatory impact. The RIS must assess this cost, both to consumers' health and the economic cost for governments. VicHealth recommends that the RIS is amended to include detailed assessment of these factors. This analysis must include costs linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, Component 1, as compared to Option 1.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

VicHealth recommends that FSANZ adopts a definition of sustainability that considers health, social, environmental and ecological impacts both now and into the future. This must be designed so that protection of current and future public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Economic sustainability must be considered within a public health framework, meaning that industry profits are not prioritised as an economic benefit over the likely costs to individuals and governments due to overweight and obesity and preventable diet-related disease.

Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, such as using sustainability claims as a marketing tactic for those products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability must not be permitted.

Sustainable diets protect the climate, ecosystems and biodiversity while also ensuring food security and culturally acceptable, accessible and affordable nutrition for human health. Economic and population growth are expected to increase greenhouse gas intensive diets. Diets that are consistent with recommendations for good health are also likely to have lower environmental impacts compared to the current Australian diet, since they encourage plant foods; limit animal foods and energy-dense, nutrient-poor foods; and recommend energy balance.

Current diets and food systems contribute to global warming and environmental degradation leading to climate change; oil, water and nutrient scarcity; land degradation; food insecurity; food waste; and biodiversity loss. The global food system is failing to meet nutritional needs and is increasing pressure on planetary health. At the current rate of consumption, studies suggest there will need to be 70–100% more food by 2050.

There is a growing recognition of the need for policies and practices that foster ecologically sustainable production and consumption of food. Two complementary approaches are required. The first is to shift consumer demand to a more environmentally sustainable food supply. The second is to work with primary producers, the food industry and governments to lead changes in the food system to make its processes and outputs ecologically sustainable. FSANZ and the Act have a key role to play in creating a food system that is ecologically and environmentally sustainable.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

VicHealth supports the inclusion of Indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system and individual food regulatory measures on Aboriginal and Torres Strait Islander and M■ori people, not only limited to the introduction of new food products.

We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander and M■ori organisations on this topic.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

VicHealth does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers, as well as an increased economic burden on governments through increased health expenditure.

We support an efficient and effective food regulatory system and agree that it may be more efficient to have different approval processes based on the level of risk. To that end, we support some elements of this component only if particular safeguards are met. However, the combination of reforms proposed represents a significant shift to a system that even further prioritises private profits and transfers the burden of risk onto Australian consumers. Our concerns are discussed below.

USING OTHER REGULATORY INSTRUMENTS: CODES OF PRACTICE AND GUIDELINES
We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government-led and mandatory, as voluntary or industry-led food regulatory measures often lead to measures that result in detrimental impacts on public health. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems. We also agree that only low-risk issues are suitable for inclusion in codes of practice.

RISK FRAMEWORK FOR APPLICATIONS AND PROPOSALS
In theory, we support the idea of a risk-based model where low-risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. However, greater detail is required for us to provide a clear assessment of the proposed measure. This includes the types of applications and proposals that are considered low- or high-risk, and the pathway that will apply. We recommend that the risk framework provided in the draft RIS (Table 5) is amended to reflect the following feedback:
(a) Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on preventable diet-related disease
(b) While evidence of immediate impacts on health (and other factors) should be considered, long-term impacts must also be considered, as many applications or proposals only show impact over time. To be considered low-risk, the type of amendment must be limited to those that do not have any impact either on short-term public health and safety, or on long-term public health.
(c) We do not support any measures that are industry-led or that allow the industry to self-substantiate evidence to support an application.

This risk-based framework must still involve FSANZ's assessment and decision-making to approve each application or proposal. We do not support decision-making pathways that rely on industry self-substantiation of evidence or automatic approvals.

We agree the framework should be developed outside the legislative reform process, and that it must be developed with all governments that are part of the food regulatory system. This must also be subject to stakeholder consultation and regular review and oversight to ensure there are no negative outcomes.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

DELEGATION BY FSANZ BOARD AND FOOD MINISTERS' MEETING
We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision-making processes and reduce delays, while ensuring current processes are followed for decisions that are not low risk.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

It is critical that jurisdictions have oversight of amendments to the Food Standards Code.

NEW PRODUCT APPROVAL PATHWAYS
The three new potential pathways contained in Component 2 essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the draft RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals that the RIS specifically states 'often have system-wide impacts' and 'arguably [have] a wider reaching benefit for the broader Australian and New Zealand public'. There is also no pathway for new or amended food standards to protect public health.

Our feedback on each pathway is discussed below.

1. Accepting risk assessments from overseas jurisdictions – automatic adoption and minimal checks:
VicHealth strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health, because international standards often represent the minimum of necessary regulation, rather than the international best practice that Australia should be aiming for, in line with the review's Aspirations document.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we believe this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the Australian context.

In addition to an 'automatic adoption' approach, the draft RIS proposes a 'minimal checks' pathway, where FSANZ will 'undertake minimal assessments of the suitability of the standards within the Australian-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators'. It is difficult to fully assess this without detail of what these 'minimal assessments' will entail.

Any model of this nature must be extremely narrow and apply only to very low-risk technical issues, and must include a detailed assessment of the Australian context, including the impact on short- and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision-makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the draft RIS that these are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

2. Industry-led pathways:
VicHealth strongly opposes the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health. It instead represents a system that transfers public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the Food Standards Code if they are 'generally recognised as safe' by qualified experts.

We know from Australian experience that self-substantiation of health claims is ineffective, and its expansion must not be allowed.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

VicHealth disagrees with this proposal. Adding a third limb for Ministers to delegate to the FSANZ Board further centralises decision-making and means that the Board could then further delegate to the CEO. This provides too much power to the FSANZ CEO and Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system, which state that the Ministers will lead action to meet the aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

VicHealth does not support using codes of practice or guidelines to replace food standards. We believe that guidelines are only appropriate for information that explains how to implement food standards. Mandatory government-led codes of practice could be used for measures that require detail and flexibility; for example, a code for sustainable packaging. There must be a mechanism incorporated into the Act that ensures all jurisdictions in the joint food regulatory system have oversight of these forms of food regulatory measures and to ensure there is universal adoption by industry so there is equity across businesses and industries.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

While we cannot provide this data, we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs over and above this process should be considered as part of this RIS analysis of administrative burden.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the public health costs to consumers and governments of adopting international risk assessments. This assessment must consider short- and long-term health and consider the overall long-term effect on the standard of public health protection applied in Australia, to ensure we meet and/or exceed international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

VicHealth strongly opposes the introduction of regulatory sandboxes, as it represents an unacceptable risk to public health and contradicts the purpose of food regulation to protect health and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

The draft RIS provides no examples of a food regulatory sandbox system in other jurisdictions (instead providing a financial regulation example which should not be applicable in this context) and no detailed analysis of the risks and benefits that are likely to arise. We are unable to fully assess this policy proposal without a clear understanding of when it could be used and its impacts.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent the transparent and independent decision-making that is essential for the integrity of the food regulatory system.

We very strongly disagree with the statement within the draft RIS that the standard on health claims is a barrier to innovation, which appears to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards related to labelling of any kind, including health claims. Those standards regulate how a company can market and label their food; they do not stop or delay the introduction of a new product. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards and concentrate additional resources on reorienting its work to protect long-term public health.

RESOURCING FSANZ TO UNDERTAKE MORE TIMELY, HOLISTIC AND REGULAR REVIEWS OF FOOD STANDARDS
VicHealth supports FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Code in practice, and its alignment with public health objectives.

We recommend that the final RIS incorporates a specific public health and consumer review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection and providing consumers with adequate information. This must include review of existing standards and the

capacity to introduce new standards. This process must require FSANZ to consider long-term health outcomes, and how food regulation can improve diets, reduce overweight and obesity and prevent diet-related disease. The process must also recognise the resource constraints of public health organisations and enable FSANZ to review evidence. This review process should be resourced separately to industry applications and should be subject to reasonable time limits.

The review process outlined in the draft RIS appears to have a significant focus on reducing regulatory burden for the food industry. This system is unlikely to achieve best practice public health outcomes, as there is often an inherent conflict between effective, evidence-based public health measures and the goal of minimising regulation. VicHealth recommends that to effectively protect public health, the Act should include a specific review pathway that is focused only on public health outcomes.

EXPANDING FSANZ'S FOOD SAFETY ROLE: COORDINATING FOOD SAFETY RESEARCH, ACTING AS A GUARDIAN OF FOOD SAFETY DATABASES AND COLLATING AND CREATING CONSUMER-FACING FOOD SAFETY EDUCATION MATERIALS
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 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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals should be avoided, as FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

While we agree with some of the aspects of this component, we do not support all, as discussed below.

FSANZ AND FOOD MINISTERS JOINT AGENDA SETTING
We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects long-term health and preventable diet-related disease. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ PARTNERING WITH GOVERNMENT TO MAKE INTELLIGENCE-LED DECISIONS AND REDUCE DUPLICATION OF EFFORTS
We support earlier involvement with the Food Regulation Standing Committee and collaboration with enforcement agencies. We also support information-sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessments or create a minimal checks pathway without adequate assessment and safeguards.

FSANZ'S DATABANK COULD BE AVAILABLE TO DRIVE HIGH-QUALITY RESEARCH AND POLICY WORK BOTH ACROSS AND OUTSIDE GOVERNMENT
We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring and research. Having a centralised database would ensure independence, consistency and sustainability of ongoing monitoring efforts (e.g. Healthy Food Partnership targets). If a fee-for-service model is established for this it should take an equitable approach such as a tiered fee structure.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

VicHealth recommends that should FSANZ be given a function to create a data bank, access to this data is provided without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

VicHealth does not support this component. The reasons for this are discussed below.

CHANGING FSANZ BOARD ARRANGEMENTS
We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board to ensure that FSANZ is focused on achieving its primary objectives of protecting public health and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills-based approach, although we expect that members nominated by external organisations have relevant skills. We also do not support reducing the Food Ministers' role in approving Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system can have oversight of Board appointments.

INVESTMENT INTO BUSINESS SOLUTIONS
While we support an online portal, we recommend that this is resourced separately and in addition to FSANZ's usual operations.

While the draft RIS notes it is outside the scope of the review, we are concerned by the suggestion that FSANZ considers using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards; for example, additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label, as it ensures there is immediate access to this information at the point of purchase and provides equitable access to key information for all consumers.

NEW COST-RECOVERY MECHANISMS FOR INDUSTRY-INITIATED WORK
We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit-for-purpose in achieving its primary objectives of protecting public health. The combination of reforms in Option 2 prioritises the profits of the processed food industry by enabling industry to sell more ultra-processed food that is harmful to health with less oversight. It will increase barriers to public health reform, while placing the burden of health and economic risk on individual Australian consumers and Australia's health system.

This means that all risks to consumers and public health outlined in relation to Option 1 (see our response to question 9) also apply in relation to Option 2, to an even greater extent.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The costs and benefits that should be measured are largely similar to those identified in relation to Option 1 (see our response to question 7). The RIS must assess in detail both the qualitative and quantitative costs and benefits in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments, but also by industry.

This analysis must include the following:
(a) The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to improve public health. This can be assessed by referring to the costs saved and health risks reduced by existing public health measures that were delayed under the current system (for example, see our response to question 8), together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
(b) The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health outcomes. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether Option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on industry, we believe that public health reforms will be more difficult to progress and approve under Option 2.
(c) The administrative cost to public health and consumer organisations due to participating in lengthy and/or delayed processes to review and amend food standards.
(d) The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short- and long-term health impacts and consider the impact of Option 2 on the number of unhealthy foods that are sold and promoted to consumers.
(e) The economic costs borne by industry for productivity loss, sick leave and staff turnover as a result of preventable diet-related diseases.

COSTS AND BENEFITS OF COMPONENT 1
We do not agree with the statement in the RIS that there is a clear net benefit to Component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost–benefit assessment for Component 1 does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in question 7, the draft RIS states that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include a detailed assessment of the costs to public health and consumers from elevating trade and industry interests. This analysis must include costs linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on industry under Option 2, Component 1, as compared to Option 1 (status quo).

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result from them, both qualitative and quantitative.

We do, however, have data and analysis to understand the impact of poor diet, overweight and obesity and preventable diet-related disease, from both a qualitative and quantitative perspective. This data should be used as the foundation of a detailed assessment in the RIS of the impact of the proposed reforms on public health outcomes.

Many Australians are not consuming an optimal diet for good health, are above a healthy weight and have preventable diet-related diseases such as type 2 diabetes, heart disease and cancer. Poor diet and overweight and obesity make a major contribution to the burden of disease in Australia. Data is also available on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the RIS must assess the health and economic costs of estimated changes resulting from proposed reforms to the number of Australians and New Zealanders who have a poor diet, are overweight or obese and suffer from preventable diet-related disease. It will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented; however, the RIS can quantify the economic and health costs of a slight change in these levels. For example, a 2015 PWC report estimated the annual cost of obesity in Australia as $8.6 billion in direct and indirect costs (see 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 A$21 million per year in Australia.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers above proposals that have widespread public health impact. This results in delayed action on public health measures, instead benefiting industry profit and leading to higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit-for-purpose in achieving its primary objective: protecting public health.

VicHealth is concerned that if additional cost-recovery mechanisms are introduced, this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role. While we acknowledge that a lack of resources limits FSANZ’s ability to deliver its core functions and understand that a holistic review of the way FSANZ is funded is required, it is essential that this review does not result in negative public health impacts.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not delay proposals. We also recommend the introduction of a specific public health pathway to request changes to the Food Standards Code that must be addressed and responded to in a timely manner and that acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Consideration of this issue must also assessment of the impact on public health. In particular, it must assess how current cost-recovery models affect public health and the likely impact of expanding those measures. This must include assessment of the current prioritisation of paid industry applications above proposals to benefit public health, and the delays that are attributable to this system.

It must also consider how FSANZ would be able to undertake the additional responsibilities under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

VicHealth does not engage with the system by applying for review and amendment of food standards. This is because the current system prioritises industry interests and there is no specific pathway designed for public health organisations.

We regularly engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes. These processes disproportionately benefit large food companies with significant resources.

VicHealth strongly recommends that the RIS is revised to address the prioritisation of paid industry applications over proposals that create change with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review that benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The length and complexity of the process mean that generating change is very resource-intensive for public health organisations. It also creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long-term health outcomes.

The RIS must consider how this imbalance can be addressed to ensure public health is prioritised above industry profits. One element of reform must be a specific public health review pathway and a pathway for consumers to seek amendments to the Food Standards Code. The process must recognise the resource constraints of public health and consumer organisations, enable evidence review by FSANZ and be subject to reasonable time limits.

VicHealth also notes the considerable resourcing required of public health bodies to respond to consultations such as this. This is exacerbated by short deadlines compared to the size of consultation papers, and the use of questions that are more targeted to industry and can be difficult to respond to from a public health perspective (e.g. quantifying costs and benefits to industry).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

The pathways proposed in the RIS are industry-focused and do not allow for public health organisations' engagement. The options for reform would make it more difficult for public health organisations to engage with the system, as they represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health benefits.

The RIS should be revised to include a public health pathway to enable public health organisations and consumers to request changes to the Food Standards Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable it to coordinate action to respond to food incidents and food recalls, either in consultation with the states or territories or on its own initiative, is unnecessary as we see no issues with the current system. Given FSANZ's resource constraints, it should focus on the current objectives of the Act.

VicHealth disagrees with the statement in the draft RIS that there is a 'net positive benefit' to Component 1. The cost–benefit assessment for Component 1 is not comprehensive. It does not assess the impact of reassigning FSANZ's limited resourcing to an area where there is no current need for FSANZ to take a role. Giving FSANZ an additional role will further exacerbate this.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

VicHealth is not aware of any quantified costs.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

VicHealth does not believe it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incident response, for the reasons discussed in our response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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 give stakeholders better access to information to allow them to comply with the Food Standards Code. However, some elements of this component go much further than this and we do not support these, as discussed below.

Resourcing 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 make the following points in relation to the specific guidance mechanisms identified in the draft RIS:

STATEMENT OF INTENT ALONGSIDE FOOD STANDARDS
We support FSANZ providing statements of intent alongside food standards. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ TO UPDATE AND MAINTAIN INDUSTRY GUIDELINES
While we support independent industry guidelines developed by FSANZ, it is critical that this process is not industry-led.

There must be equal access for all stakeholders (consumers, public health stakeholders and industry) to getting a binding standard, requests for clarification of food standards or specific guidance on interpretative issues.

FSANZ TO ASSIST BUSINESSES TO PREPARE DOSSIER TO SUBSTANTIATE GENERAL HEALTH CLAIMS
We do not support the current system of self-substantiation, but agree that guidance is necessary to ensure organisations comply with regulations for general health claims. We do not believe that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under-resourced to deliver its current remit and changes should instead be made to better resource and equip states and territories to undertake a support role in ensuring businesses are complying with standards. It is important that this role is done before products are on the market, so that unsubstantiated claims of relationships between food and health are not made prior to FSANZ assessing them. If companies could sell the product while claims are being assessed, they could sell them without the claims for that period.

MINISTERS TO DETERMINE WHETHER A PRODUCT IS A FOOD OR A MEDICINE
We do not support changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. While the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers, the power to make this determination should not sit with a single minister. Instead, this power should sit with a broader group that can consider categories of food and medicine in a more comprehensive manner.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

VicHealth does not support FSANZ having a limited enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions proposed for FSANZ under this draft RIS.

The additional powers and functions proposed by the draft RIS that enable FSANZ to set guidelines for interpretation and make binding interpretative statements will enable the states and territories to better enforce the provisions in a more cohesive and consistent manner. This could address differences in interpretation and action by different jurisdictions, streamline the process, reduce inequities for food companies and increase consumer confidence in the system. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

We disagree with the statement in the draft RIS that there is a 'net positive benefit' to Component 3. The cost–benefit assessment for Component 3 is not comprehensive, as it does not assess the costs or benefits of alternative avenues for ensuring consistency in enforcement across the states and territories, nor the cost to public health of FSANZ's resourcing being deferred into the enforcement space. FSANZ is under-resourced to deliver its current remit and given the prioritisation of industry applications, this has a negative outcome for proposals. Giving FSANZ an additional role will further exacerbate this.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

VicHealth does not have access to this data. However, we note that in considering costs and resources, consumer safety and public health should be prioritised over cost-saving efforts.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are proposed to implement Component 4. We do not support any changes to the objectives in s.3 or s.18 of the Act, or to the items to which FSANZ must have regard in s.18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

We also do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS, the Food Ministers' Meeting is the 'body that sets the policy direction for the joint food standards system', and therefore this role should remain as the Food Ministers' responsibility.

The draft RIS states that Component 4 could create new economic opportunities for businesses. Creating new economic opportunities is not and should not be the focus of amendments to a food regulatory system that has an overarching objective of protecting public health.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost–benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals related to public health outcomes, as industry applications will still be prioritised and FSANZ will have even less time and resources to allocate to public health proposals. The RIS must assess this cost, with analysis including:
(a) the costs (both in terms of consumer health and economic costs) of further delays in progressing food regulatory measures designed to promote public health
(b) the economic costs to consumers and governments, as well as industry, of poor health outcomes that are not addressed by public health food regulatory measures.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications above public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures and achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role. However, we do acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The policy options do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers with adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised above public health, meaning that the status quo, while being inadequate, would be better for the health of Australians.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to, the following:

1. Developing a clear, practical and timely pathway for public health stakeholders to request FSANZ to review and amend the Food Standards Code to meet a public health objective.
2. Giving FSANZ the resources to set strategic priorities that address the biggest dietary challenges for our population and aim to improve dietary patterns. This must include the requirement to regularly review the operation of the Food Standards Code in practice and its alignment with public health objectives, specifically long-term health.
3. Creating a delineation within FSANZ for its two main work streams (applications and proposals). These should be funded, resourced and prioritised without competing against one another. Funding and resourcing should be allocated separately for each workstream and then prioritised within that workstream alone.
4. Setting statutory maximum timeframes for proposals that are consistent with the timeframes for applications.
5. Addressing concerns in respect to jurisdictional inconsistencies by amending the Food Regulatory Agreement and the model law provisions.
6. Undertaking a review of the health claims system as a whole with the view to refining this system to ensure it has the best outcomes for long-term public health and adequate consumer information, above industry's ability to promote their (often unhealthy) products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of which foods can carry health claims, which claims can be made and the impact of these claims on the food supply and consumer choice. Overall, the review should consider whether health claims enhance or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

We do not think any components of either Option 2 or Option 3 should be pursued, and certainly not prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health.

We strongly support reform to improve the food regulatory system, but this must be done in a way that better protects long-term public health. The FSANZ Act review must be refocused to put public health first. This must include an independent review to fully assess the impact on long-term public health of all proposed options, including the health and economic costs and benefits to consumers and governments. The RIS must be amended to incorporate the policy problems listed above, the findings of this independent review and to identify additional reforms to address long-term public health (see our responses to questions 1, 46 and 47).

The priority should be aligning the FSANZ Act and review with the Aspirations for the Food Regulatory System. Priorities should include:
(a) clearly defining public health to include short- and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised
(b) developing a clear, practical and timely pathway for public health stakeholders to request FSANZ review and amend the Food Standards Code to meet a public health objective
(c) resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health
(d) setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work
(e) removing inconsistencies in interpretation and enforcement between jurisdictions. This could be achieved without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law
(f) reviewing the health claims system as a whole, to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

It is VicHealth's view that none of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System, as they are not in line with the overall vision of the Aspirations and nor do they enable the high-level aims to be met. We have expanded on this further below.

The Aspirations for the Food Regulatory System state that the Food Ministers are the leaders in meeting the aims of the Aspirations and yet many of the components outlined in Options 2 and 3 seek to limit the involvement of the Food Ministers, which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers 'supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. The draft RIS does not reflect the draft Aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet public health objectives and the aspirations set by all participating governments.

The Communique further notes that Ministers will reconsider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:
(a) include an additional aim to ensure the food supply is equitable and enables equal access to healthy foods throughout Australia and New Zealand
(b) clarify Aim 1 to make it clear that the health and safety of consumers will be protected by reducing both short-term and long-term risks related to food
(c) clarify Aim 4 to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

ANALYSIS OF DRAFT RIS OPTIONS AGAINST THE VISION AND AIMS OF THE DRAFT ASPIRATIONS FOR THE FOOD REGULATORY SYSTEM

1. ANALYSIS OF THE VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.

Option 1 – status quo – the current food regulatory system is primarily focused on protecting Australians from short-term food safety issues and prioritises industry interests and profits. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on 'improving and protecting public health'.

Option 2 – modernise the Act – the combined effect of the 6 components of this option will result in an Act that:
(a) further prioritises industry interests and profits over public health, and seeks to marginalise other stakeholders including public health organisations by taking a less collaborative approach
(b) removes safeguards and proposes instruments such as regulatory sandboxes, resulting in less focus on improving and protecting safety and greater risk to public health
(c) elevates the importance of trade and impact on business, resulting in greater barriers to implementing public health measures that seek to improve health
(d) fails to take any action that enables efficient processing of proposals, which could be done by adequately and separately resourcing this stream of FSANZ's work from applications work
(e) fails to improve outcomes for public health, which together with the above results in even less public health promotion and protection than Option 1.

Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option will result in an Act that:
(a) centralises power and control with FSANZ, marginalising state and territory input and impact, resulting in less collaboration between governments and less collaboration between stakeholders and state and territory governments
(b) focuses FSANZ's attention and resources on new functions (i.e. recalls and enforcement) when it is already limited in its capacity to deliver its current remit.

By widening the remit of FSANZ there will likely be a further deprioritisation of proposals and strategic project work, and therefore even less public health improvement and protection than Option 1.

2. ANALYSIS OF AIM 1: To protect the health and safety of consumers by reducing risks related to food:

As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.

Option 1 adequately aligns with this aim in respect of short-term risks related to food safety, but does not align with this aim in respect to the long-term health risks related to food including overweight and obesity and preventable diet-related disease. Option 1 prioritises applications for new and novel foods and products, often ultra-processed foods that are not good for health, above proposals for public health measures. This further exacerbates long-term food-related health risks and creates a food regulatory system where these issues cannot be addressed.

Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than Option 1 and does not improve the status quo in relation to long-term risks. It is imperative that our food regulatory system addresses long-term food-related health risks.

Option 3 could result in no change in relation to short-term food-related risks as the status quo does not improve current arrangements in relation to long-term risks. Again, it is imperative that our food regulatory system addresses long-term food-related health risks.

3. ANALYSIS OF AIM 2: Enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled:

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.

Option 2 does not align with this aim as it further deprioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.

Option 3 does not align with this aim as it centralises power and control with one body, which undermines the integrity of the joint food regulatory system as it removes oversight and decision-making from participating governments. This is likely to result in better outcomes for industry but not for consumers.

4. ANALYSIS OF AIM 3: Support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues:

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The draft RIS notes that proposals ‘often have system-wide impacts’, and these system-wide impacts are what promote healthy food choices and enable responses to health issues.

Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed products that are not considered healthy food choices and do not have enhancing nutritional qualities, to enter the market with more ease and less oversight.

Option 3 does not align with this aim as it centralises power and control with one body, which undermines the integrity of the joint food regulatory system as it removes oversight and decision-making from participating governments. This is likely to result in better outcomes for industry but not for health and consumers.

5. ANALYSIS OF AIM 4: Enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand:

Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. However, the resulting market is not diverse, as it is becoming increasingly dominated by ultra-processed foods that are not considered healthy food choices and are not sustainable from a health or environmental perspective. This contributes significantly to the immense economic burden of preventable diet-related disease on consumers and all governments.

Option 2 further encourages the development, production and sale of unhealthy food products, which will result in increasing economic benefits for industry. However, it will result in a greater economic burden from preventable diet-related disease on both consumers themselves and all governments and will have increasingly damaging impacts on health and environmental sustainability.

Option 3 does not align with this aim as it centralises power and control with one body, which undermines the integrity of the joint food regulatory system as it removes oversight and decision-making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor will it address the immense economic burden of preventable diet-related disease on consumers and all governments.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 16:33:32**

About you

What is your name?

Name:
Clare Hughes

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Cancer Council Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Cancer Council is Australia's leading cancer charity, working across every aspect of every cancer. Every day, we support people affected by cancer when they need it most; speak out on behalf of the community on cancer issues and advise the Australian Government and other bodies on evidence-based practices and policies; empower people to reduce their cancer risk; and find new ways to better prevent, detect and treat cancer. Cancer Council 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.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The draft RIS fails to consider the many serious health issues related to food by focusing on the commercial benefits/costs only. In the last 30 years rates of obesity and preventable diet-related diseases have risen to alarming levels. The food system has a role to play in addressing this increase in diet-related diseases and it has an ongoing responsibility to protect consumers from the long-term health consequences of over-consumption of ultra-processed foods. A regulatory impact analysis must include the health consequences of the food system.

Explicitly, this draft RIS fails to address the policy problem 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 - and the provision of adequate information to allow consumers to make informed choices.
This draft RIS is only one component needed to consider the potential impact of any changes to the FSANZ Act and Australia’s food regulatory system. As the public health impacts have been explicitly excluded from this RIS and will not be adequately addressed within related projects underway as part of the reform agenda of the food regulation system, a separate and additional process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

This additional review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition and the prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how the current food system has contributed to the burden of obesity and diet-related diseases in Australia; and include modelling of future costs and consequences should Australia's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness. The findings of this review must then be incorporated into a comprehensive RIS before any changes are made to the FSANZ Act.

While the definition of "protecting public health" is mentioned in Policy Problem 1, the policy problem is framed as the Act being burdensome and not supportive of efficiency and stops at the definition of public health. We agree 'the protection of public health and safety' must be clearly defined to include long-term health and the prevention of diet-related disease, however it requires clear actions under the Act and the problem of the rise of diet-related disease must be included within the scope of the risk analysis.

There are serious health problems in Australia and evidence shows that the food regulatory system has an important contribution to make to address the growing burden on the health system, along with supporting broader efforts to address diet-related diseases. In 2017-18 two thirds (67.0%) of Australian adults and one in four (24.9%) Australian children have overweight or obesity. The Australian Institute for Health and Welfare has shown that overweight and obesity was responsible for 8.4% of the burden of disease in Australia in 2015 and 7.8% of total cancer burden was attributable to high body mass. Dietary risks contribute 7.3% of total burden and 4.2% cancer burden.1

It has been estimated that in Australia in 2013, 5% of cancer deaths and 5% of cases (equivalent to 2329 deaths and 6714 cases) were attributable to dietary factors and 5% deaths and 4% cases were attributable to overweight/obesity (equivalent to 1990 deaths and 5371 cases).
Discretionary foods which generally includes ultra-processed foods available to consumers are prevalent in the diet of Australians -- 38.1% of their dietary energy in 2019-20. Although this percentage was similar to the previous period, the total energy available from discretionary foods increased from 3,310 kJ in 2018-19 to 3,429 kJ in 2019-20.4

1. Australian Bureau of Statistics. National Health Survey: Overweight and obesity, 2017-18 2018. Available from: https://www.abs.gov.au/statistics/health/health-conditions-and-risks/overweight-and-obesity/2017-18
2. Australian Institute of Health and Welfare. Australian Burden of Disease Study: impact and causes of illness and death in Australia 2015. Canberra; 2019. AIHW
3. Wilson LF, Antonsson A, Green AC, et al. How many cancer cases and deaths are potentially preventable? Estimates for Australia in 2013. International Journal of Cancer. 2018;142(4):691-701
4. Australian Bureau of Statistics. Apparent consumption of selected foodstuffs, Australia 2019-20 2020 updated 11/12/2020. Available from: https://www.abs.gov.au/statistics/health/health-conditions-and-risks/apparent-consumption-selected-foodstuffs-australia/latest-release

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

We are concerned about the lack of regulation, particularly regarding claims about the environmental sustainability of a product. There is a danger that sustainability claims on products could provide a 'health halo' to those products and confuse shoppers who may be of the mistaken belief that a sustainability claim therefore means the food in question is healthy or of nutritional/health benefit.

We are also concerned that monitoring food industry compliance with sustainability claims will place further burden on FSANZ if not carefully managed with appropriate regulatory mechanisms.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We are supportive of a more culturally inclusive framework that recognises indigenous culture and food expertise.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

While Option 1 represents a negative outcome for public health, it is preferred over Options 2 and 3.

The current regulatory system is not set up to prioritise the health of the public and the prevention of diet-related diseases. While we support in principle, the modernisation of the system this should not come at the expense of public health. We do not support proposed changes to the status quo that involve a relaxation of regulatory systems, such as self-substantiation, at the risk of compromising public health.

While there are problems with the current system, overall it takes a proactive and preventive approach requiring assessment of food as safe in the Australian context before it is sold.
It also gives FSANZ responsibility for setting the food standards but the states and territories -- who are more closely in touch with the local community – are

responsible for enforcement and the relationship with food manufacturers and providers.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Maintaining the status quo means a continued lack of recognition of the role the food regulatory system plays in long-term health and the definition of 'public health' to incorporate both short- and long-term health. As a result, there is a significant risk that we will not see improvements to the food regulatory system that will help to drive down rates of obesity and diet-related disease, and we can expect to see trends continue upwards. This will continue to place an enormous cost burden on the health system and the economy and result in a failure to achieve the targets of the National Preventive Health Strategy.

While we have outlined concerns under the existing system about the failure of the self-substantiation of health claims and the lack of guidance from FSANZ on the interpretation of the standards, these may be better addressed outside the Act as part of the Code and the Food Regulation Agreement or as guidance notes.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Cost of delays when bringing products to market should not be the only measure considered. A risk proportionate approach should include the cost of long-term health harms. We are calling on this review to commission health economic data to fully understand the long-term health consequences of failures in food regulation, including delays in adoption of evidence-based measures such as regulation on Pregnancy Warning Labels on alcohol. The failures of self-regulatory measures to address the problem and instead delay the solution should also be considered in the risk analysis.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost of obesity and other diet-related diseases should be considered. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor) of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

This draft RIS is only one component needed to consider the potential impact of any changes to the FSANZ Act and Australia's food regulatory system. As the public health impacts have been explicitly excluded from this RIS and will not be adequately addressed within related projects underway as part of the reform agenda of the food regulation system, a separate process must now be commissioned to provide a review which includes supporting evidence of the health costs and consequences associated with food regulation and food policy.

This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition and the prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how the current food system has contributed to the burden of obesity and diet-related diseases in Australia; and include modelling of future costs and consequences should Australia's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness. The findings of this review must then be incorporated into a comprehensive RIS before any changes are made to the FSANZ Act.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

This draft RIS is only one component needed to consider the potential impact of any changes to the FSANZ Act and Australia's food regulatory system. As the public health impacts have been explicitly excluded from this current document and will not be adequately addressed by other activities outlined under the reform agenda, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition and the prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how the current food system has contributed to the burden of obesity and diet-related diseases in Australia; and include modelling of future costs and consequences should Australia's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness. The findings of this review must then be incorporated into a comprehensive RIS before any changes are made to the FSANZ Act.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Rising rates of obesity and diet-related diseases must be considered when addressing the food system. Public health groups and health systems have the impossible task of reversing the rising rates of obesity and diet-related disease, while little is done to create an environment that supports eating patterns consistent with the Australian Dietary Guidelines. Additionally, with little investment in co-ordinated and sustained promotion of healthy eating patterns, public health organisations do their best to fill this gap despite having inadequate resources to develop, implement and sustain campaigns and programs that deliver longer term changes in health behaviours. The risk of this lack of focus on public health and lack of investment is borne by the Australian community and risks an increased burden of obesity and diet-related disease in the future.

Additionally, monitoring food labelling (including the nutrition and health claims standard) should not fall to non-government organisations in the public health and consumer areas, as is happening in part now.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

n/a

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component as we strongly oppose reform incorporating trade as a core goal, as it will undermine Australians' health and detract from the primary public health objective of the Act. We do however support the clarification of the definition of public health to include both short and long-term health.

We suggest the objectives of the Act reflect consumer protection that is, "The object of this Act is to ensure high standards of public health, safety, and consumer protection throughout Australia and New Zealand" and "(c) the provision of adequate information relating to food to enable consumers to make informed choices and the protection of consumers from misleading or deceptive conduct" and the addition of "protection of vulnerable groups, including people living in rural and remote regions".

We support establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure. This will ensure the interests of public safety and health are prioritised over any undue political or commercial influence.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives.

Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health. For example, by allowing sustainability claims on unhealthy food products, while presumably meeting the objective/definition of sustainability, it could potentially be to the detriment of other public health concerns.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

The economic opportunities that might arise from a greater focus on sustainability should not be considered at the expense of public health and the cost of obesity and other diet-related diseases. As previously stated, we are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

We are supportive of a more culturally inclusive framework that recognises indigenous culture and food expertise.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

While we are supportive of a more culturally inclusive framework that recognises Indigenous culture and food expertise, the economic opportunities that might arise for Indigenous businesses from bringing traditional goods to the broader market should not be considered at the expense of the cost of obesity and other diet-related diseases. As previously stated, we are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We are supportive of modernising the food system as a principle. We do not support deregulation or relaxing any regulatory practices at the expense of consumer health. FSANZ must provide oversight of any changes to the food system and providing opportunities for food industry to put products in the marketplace without checks by an independent agency is not in the public's best interest.

We challenge the assumption in the document that states "recognising that industry has a vested interest (by way of reputation, profits/sales and growth) to ensure risks are well managed". The term 'risk' here is most likely referring to short-term food safety risks and does not consider long-term harms. The ultra-processed food industry does not take responsibility for its contribution to the rising rates of obesity and diet-related disease and cannot be relied upon to responsibly manage this risk.

We oppose the assumption that "Introducing an industry self-substantiation pathway to bring products to market may further support FSANZ's transition to risk-based and efficient regulation." Self-substantiation of health claims is failing consumers and there is no evidence that self-substantiation would provide greater efficiency or protect public health. The health claims standard is proof that post-market monitoring and surveillance does not protect public health and safety.

Post-market monitoring and surveillance work is not in the best interest of consumers or their health. The cost/benefit table does not consider the public health costs related to food regulation and should be broadened.

We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk. The combination of reforms proposed, however, represents a significant shift away from a preventive, public health approach, to an approach that prioritises private commercial interests and shifts the burden of risk onto Australian consumers.

We support allowing the FSANZ Board to delegate low-risk decisions to the FSANZ CEO, however there would need to be a clear articulation of what was considered low-risk. Internal business processes would need to ensure that the Board retains oversight over emerging risks or trends through appropriate reporting arrangements.

We oppose a proposal for automatic adoption of overseas risk assessments. Australia should aim for best practice public health measures and this may be more robust than International standards. Similarly, the food regulatory system should be set up to encourage best practice designed for an Australian context. Overseas risk assessments must be considered within the Australian food supply, our eating patterns and rates of obesity and diet-related diseases.

5 Wellard-Cole L, Watson WL, Hughes C, et al. How effective is food industry self-substantiation of food–health relationships underpinning health claims on food labels in Australia? Public Health Nutrition. 2019;22(9):1686-95

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No.

This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not support Codes of Practice replacing standards that are necessary to protect public health or consumer interests. We recognize the role guidelines play in providing information for the food industry and state and territory authorities to interpret standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We do not have data to support the administrative burden on industry but we emphasize that such costs should not be considered at the expense of public health concerns and we are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

A risk proportionate approach should not be limited to potential savings to industry but must include the cost of long-term health harms. This review must include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the use of sandboxes in food regulation where the protection of consumer health is paramount. Regulatory sandboxes as described could allow products to enter the market without any independent oversight and could result in unsafe products being made available to consumers to purchase for consumption. It implies a safe place for food manufacturers to ‘play’ with consumer’s health, free from regulatory oversight or protection of the consumer.

If sandboxes were pursued as a regulatory option, there must be clear guidance on how decisions will be made to admit a company into a regulatory sandbox, and by whom. We suggest a committee of regulators who would decide. If permitted, regulatory sandboxes should be limited to only those situations where the potential impact on public health is negligible eg it does not result in a product making health claims unless supported by an evidence review that has been endorsed by FSANZ, does not involve novel ingredients for which there is no history of safe use, does not result in the use of new nutrient content claims on foods that do not pass nutrient profiling.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support regulatory sandboxes or any temporary exemptions to food regulations to enable a food business to pilot new ideas without adequate protection of consumer health.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We cannot wholly support this component as we do not see the additional benefit of FSANZ taking on a consumer education role. Social marketing and information campaigns should be the responsibility of federal and state/territory health departments who have greater consumer communication expertise, brand recognition and trust to enable effective consumer education in food safety.

We support resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards and FSANZ as the guardian of key food databases.

We challenge the inclusion in the costs to consumers any rhetoric about ‘nanny-state’. Such language is based on food industry rhetoric and not a true ‘cost’ to consumers that would be suggested by those interested in protecting consumers. There is no place for ‘nanny state’ rhetoric in what should be an independent assessment of regulatory impacts. This language only highlights the need for a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ’s key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ’s capacity to focus on assessing applications and proposals must be questioned, FSANZ’s existing functions must be resourced as a priority. We don’t think there is a need for the communication of food safety data to be in the Act.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

We are supportive of this component but FSANZ must remain free from political and commercial influence so that decision making is based on high quality evidence and not open to commercial conflicts or lobbying. As such, all procedures should be transparent to the public.

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Cancer Council is a registered charity and has limited funds to pay for data or data-linkage services. We recognise the costs associated with making linked data available to stakeholders and propose that a cost recovery approach to linked data, but not data itself, would likely be an acceptable compromise. Public health groups should not have to pay to access critical information on the operation and outcomes of our food regulation system.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support a smaller board as there must be public health representation and a knowledge/experience mix that includes nutrition, public health and consumer representation, as well as adequate representation from both Australia and New Zealand. We do not believe that the current makeup of the Board is contributing to any of the concerns we have around the inadequacies of the food regulatory system to respond to the priority public health issues facing Australia. If anything, reducing Board size would likely diminish this, so we are in favour of retaining the status quo. A representative Board with appropriate experience is vital to support the food regulatory system and maintain consumer confidence in the regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australian consumers and on Australia's health system. Option 2 will not create a food regulatory system that is fit for purpose in achieving 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. It represents prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.
Components that reduce regulatory protection and independent oversight fail to place the consumer and their health first.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

We are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes; and the benefits to consumers and governments of a system that protects consumers' health.

In the case of Option 2 that includes the health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. The introduction of unregulated mechanisms places a burden on those working on protecting public health outcomes such as not-for-profit organisations who fill a gap in monitoring such mechanisms, though it must be recognised that these organisations do not have the capacity to do this at an appropriate level.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We are calling on this review to additionally include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes) and

the benefits to consumers and governments of a system that protects consumers health.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. Caution should be taken with a cost recovery model to ensure it doesn't undermine regulatory independence or the extent to which the workplan prioritises the protection of the health and safety of consumers. The workplan could be divided into different streams and resourced independently so that paid applications are considered but issues of public interest are still able to proceed. For example, the Labelling Logic Report was released 10 years ago, yet FSANZ is still working through numerous recommendations to improve food labelling. Despite this, resources have been directed to industry applications that have been considered and approved but would deliver little benefit for the health of the populations.

Any fee structure should have equity considerations including for size of business and whether an organisation is not-for-profit. FSANZ needs to be independently funded by government and not reliant on industry funds. The workplan risks being dominated by those who fund it and therefore could favour large businesses. Responsibility for resourcing should not be deferred from the government. It is also likely to result in workplans that prioritise food industry issues at the expense of consumers and public health. There needs to be opportunity for smaller businesses and public health and consumer groups to guide and have input into this process.

The paid application process focusses on minor changes to individual foods rather than a more holistic approach that would look at how many small changes may have broader implications for the whole food system and public health.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The impact in industry should not be considered at the expense of the cost of obesity and other diet-related diseases to the Australian community. As previously stated, we are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Cancer Council does not make applications and rarely responds to consultations on applications. We do allocate significant resources to respond to other changes to the food regulatory system including input into consultations on the Health Star Rating system, pregnancy warning labels and menu labelling. We have been particularly focused on resourcing responses to recommendations from the Labelling Logic Report.

The process for making an application is both cost-prohibitive and an administrative burden for a not-for-profit organisations.

Cancer Council's priorities for changing food standards include (but are not limited to):
• Making Health Star Rating mandatory by bringing it into the Food Standards Code
• Reviewing Standard 1.2.7 Nutrition, health and related claims to remove the self-substantiation permission for general level health claims and require all foods to pass Nutrient Profiling Scoring Criteria in order to make a nutrition or health claim.

As a not-for-profit organisation, Cancer Council does not have the capacity or resources to prepare these applications.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Cancer Council has found it challenging to interpret parts of the Food Standards Code and where to go to get timely advice. There has been a lack of response to our concerns about specific notified food-health relationships. This has been a frustrating process and resulted in notified food-health relationships that are not supported by evidence and the potential for products to be on the market carrying unsubstantiated health claims.

As a not-for-profit organisation, Cancer Council finds it challenging to allocate resources to respond to important consultations on the food regulatory system. Consultations are often within a short period and without warning with increasingly large consultation papers, and background evidence presented strongly supports the food industry narratives and lacks public health and consumer evidence. That requires effort and resources on the part of Cancer Council and other public health organisations to respond to the public health perspective and provide evidence to support our concerns when it should be the responsibility of the food regulatory system to consider the public health impacts of food regulatory decisions.

This current RIS is a good example of the food industry being well considered and resourced but the draft RIS lacks the public health lens, putting the onus on charity organisations with limited resources to provide the counter argument and evidence. The first response to initiatives is often a voluntary approach which draws out the consultation process, (with reviews and extra steps of consultation) often without good outcomes until a regulatory approach is taken (for example pregnancy warning labels on alcohol products). This means the consultation process is drawn out and there are health costs related to such a delay. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

Targeted consultations mean not all public health groups are invited to participate in such consultations. Also, we believe that the Consumer and Public Health Dialogue would benefit from diversifying member organisations, particularly those who are active in nutrition and public health policy.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

The pathways outlined are set up for the food industry. We have already stated that we do not support pathways that involve limited oversight by an independent body or are focused on self-regulation.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Cancer Council is supportive of an efficient food regulatory system but cannot see that this component would lead to any improvements in the existing system. Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the States or Territories or on its own initiative, is unnecessary as we see no issues with the current system. Local authorities are working more closely with the community and have the knowledge of their regions - this level of understanding should not be dismissed by centralisation.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The cost of obesity and other diet-related diseases should be considered. We are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor) of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

n/a

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We are supportive of FSANZ providing guidance through statements of intent alongside food standards and updating and maintaining industry guidelines to assist with interpretation of the Standards. 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 are not supportive of broadening Ministerial power to determine a product as a food or FSANZ having a role to assist Australian businesses to prepare an evidence dossier to substantiate general health claims. On the contrary, Cancer Council's concerns about Standard 1.2.7 would be addressed by removing the self-substantiation permission entirely and requiring all general level health claims to be pre-approved by FSANZ.

Cancer Council has called for greater guidance from FSANZ on the interpretation of the standards as that 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. While we are concerned about consistency in interpretation of the Standards we believe that changes to the Act are not necessary to address this and jurisdictional inconsistencies in food regulation could be addressed outside the Act.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The cost of obesity and other diet-related diseases should be considered. We are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor) of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

n/a

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We are not supportive of changes in the Act to provide FSANZ with enforcement powers. There does not seem to be benefits that would outweigh the challenges of changes to jurisdictional powers and the development of a bi-national regulator. Any issues with the current system from an enforcement point of view could be addressed within the Standard and guidelines rather than through changes to the Act. For example, the health claims standard should be changed to reflect best practice procedures and protect public health by removing the self-substantiation process and requiring general level health claims to come under the same provisions as high-level claims. We believe that the enforcement powers should not be removed from the states and territories as they have the resources now, are based closer to their community and understand their regions. The draft document states concern about this component and the challenge to keep functions such as standards setting separate, from regulator enforcement activities to minimise conflict of interest. We also have these concerns.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

The cost of obesity and other diet-related diseases should be considered. We are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor) of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The primary purpose of the FSANZ Act should be to provide a food regulatory system focused on improving and protecting public health, both long- and short-term for the Australian and New Zealand population. Trade opportunities for Australian and New Zealand businesses should not be a priority.

We are supportive of FSANZ having a role internationally to work collaboratively with standard setting agencies and other expert bodies but do not see a need for changes to the Act. FSANZ already plays a role in informing Australia's position at the Codex Alimentarius Commission.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Option 3 has a focus on centralization of enforcement and we do not see that as a solution to the concerns we have raised. We do not think components in Option 3 would bring about any changes to address public health concerns.

Option 3 will not create a food regulatory system that is fit for purpose in achieving 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 RIS has not considered the cost of obesity and other diet-related diseases. We are calling on this review to include a complete regulatory impact of long-term health harms. This should include the economic and social costs to consumers and to the government (both in terms of costs to the health system and economic costs brought about by loss of labor) of poor health outcomes and the benefits to consumers and governments of a system that protects consumers health.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support components in Option 3.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No. The policy approaches fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations and the draft RIS explicitly excludes the consideration of public health issues.

The policy approaches proposed in Options 2 and 3 prioritise industry interests over public health. While Option 1, the status quo, is inadequate as it does not enhance the extent to which the food regulatory system addresses public health priorities, it does offer the greatest protection for the health of Australians.

Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.
This should include:
• Address many of the problems with the status quo through amending the Food Regulatory Agreement and model law provisions to ensure there is consistency between the States and Territories, rather than addressing them in the FSANZ Act.
• Undertake a review of the health claims standard and procedures linked to it to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote products.
• Develop a separate avenue for public health matters to be addressed with dedicated funding and resourcing to ensure proposals are progressed in a timely manner.
• Give FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
• Ensure the main work streams (applications and proposals/strategic work) are not competing against one another for funding and resourcing.
• Set statutory timeframes for proposals.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Cancer Council supports reform of the food regulatory system to better address current and future public health priorities. Option 1 represents a better outcome than the other options. Although it does not effectively protect public health, it does largely take a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian context before adoption. Options 2 and 3 involve less regulatory interventions allowing products to enter the market with inadequate protections for health and safety and consumer interests. This could undermine confidence in the food supply and will come at a cost to individuals and governments; increasing the workload of FSANZ to serve the interests of the food industry, but don't address public health priorities. We do not think any of the components of Option 2 or 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health.

Cancer Council's priorities for the FSANZ Act review are:

1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act.
As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.
This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition and the prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how the current food system has contributed to the burden of obesity and diet-related diseases in Australia; and include modelling of future costs and consequences should Australia's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability

3) Repositioning the food regulatory system to meet Australia's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it in to line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the Australian Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The reform options do not reflect the draft Aspirations for the Food Regulatory System. The Aspirations document clearly outlines that the food regulatory system must respond to public health challenges including poor nutrition and obesity. The reform options do not reflect the strong focus in the Aspirations document's aims to 'support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues' and 'enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled'. The options presented do not take a consumer health focus but only focus on costs and benefits to the food industry to place more food products into market, regardless of the long-term health implications of that food.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 16:37:06**

About you

What is your name?

Name:
ian jarratt

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Consumer organisation

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Queensland Consumers Association

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
State

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Queensland Consumers' Association (the Association) is a non-profit organisation established in 1976 to advance the interests of Queensland consumers.
The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups.
The Association's members work in a voluntary capacity and specialise in particular policy areas.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

However, it would be a better than adopting ALL the components of Options 1 and 2. betetr

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Continuation of major negative impacts f preventable diet related diseases on consumers and governments.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative mainly because of the proposed reduced importance of consumer protection.

We support changing S3 of the Act but NOT the addition of a core goal of “an efficient and internationally competitive food industry”.

Industry’s needs are sufficiently provided for by retaining the current goal in S3 of:
(b) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;

And by retaining these Objectives of FSANZ (S18):
2(b) the promotion of consistency between domestic and international food standards;
(c) the desirability of an efficient and internationally competitive food industry;
(d) the promotion of fair trading in food;

Furthermore, we consider that the current Object of the Act does not:
Sufficiently recognise the objective of consumer protection. This should be included in the Act’s object.

This would recognise that although objectives of protecting public health and safety are also consumer protections some consumer protection objectives do not exclusively involving public health and safety. For example provision of accurate and easily accessible and understood information about food type/name, ingredients, endorsements, claims, production methods, etc. We also draw attention to the fact that the Codex General Standard for the Labelling of Prepackaged

Foods (CODEX STAN 1-1985) refers to matters not exclusively involving health and safety.

Sufficiently recognise the need to protect consumers from misleading or deceptive conduct. This should be included in the goals in S3. In support of this we note that the latest draft of the Aspirations has the following high level aim:
To enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled

Also the provision of adequate information relating to food to enable consumers to make informed choices AND the protection of consumers from misleading or deceptive conduct play crucially important roles in the achievement of public health, safety AND other consumer protection/empowerment objectives related to food. Therefore, they should both be specific goals in S3 and should be ahead of (c) the desirability of an efficient and internationally competitive food industry;

We support providing increased clarity about the meaning of “public health and safety” and including “safety” in the Object.

Reflecting the above comments, we consider that S3 of a revised Act should be:
3 Object of Act
The object of this Act is to ensure high standards of public health protection, safety, and consumer protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:
(a) high degree of consumer confidence in the quality and safety of food produced, processed, sold in or exported from Australia and New Zealand;
(b) the provision of adequate information relating to food to enable consumers to make informed choices and the protection of consumers from misleading or deceptive conduct;
(c) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;
(d) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health, safety and consumer protection.
(e) for the purposes of this section, public health and safety means all 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 food safety concerns.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No. The focus of many of the reform options on meeting industry objectives will substantially reduce the Act's ability to achieve the public health, safety and consumer protection objectives and goals in the latest Aspirations document and which shodul also be the major objectives of a new Act.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 17:06:04**

About you

What is your name?

Name:
ian jarratt

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Consumer organisation

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Consumers Federation of Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
State

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

CFA is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at http://consumersfederation.org.au/members/cfa-organisational-members/.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative only because it would be better than adopting all the components of Options 2 and 3.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Consumer risks
Continuation of, and likely increase in, the major negative impacts on individual consumers of preventable diet related diseases and the cost of the non or inadequate availability of information and education to assist individual consumers, including the vulnerable or disadvantaged and those with disabilities, to make well informed food choices/decisions.
Government risks
The high costs to the health system and the reduced economic output attributable to preventable diet related diseases.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The beneficial impacts on public health and safety and consumer protection need to quantified, not just the estimated regulatory burden on industry, governance costs, and FSANZ operational costs and capacity.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Negative mainly because the importance of consumer protection objectives would be substantially reduced.

Re: Clarifying objectives and functions and reflecting these in the Act
We support changing S3 of the Act but not the addition of a core goal of “an efficient and internationally competitive food industry”.
We consider that industry’s needs are sufficiently provided for by the current inclusion in S3 of:
(b) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;
And by the following Objectives of FSANZ (S18) of:
2(b) the promotion of consistency between domestic and international food standards;
(c) the desirability of an efficient and internationally competitive food industry;
(d) the promotion of fair trading in food;
We also consider that the current Object of the Act does not:
• Sufficiently recognise the objective of consumer protection. We consider that it should be included in the Act’s object. This would recognise the existence of, and need to cater for, consumer protection objectives not exclusively involving public health and safety. Examples of relevant matters include information about: food type/name, ingredients, endorsements, claims, production methods, etc. Also, the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985) refers to matters not exclusively involving health and safety.
• Sufficiently recognise the need to protect consumers from misleading or deceptive conduct. We consider that it should be included in the goals in S3. In support of this we note that the latest draft of the Aspirations has the following high level aim:

“To enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled”

We also emphasise that the provision of adequate information relating to food to enable consumers to make informed choices and the protection of consumers from misleading or deceptive conduct play crucially important roles in the achievement of public health, safety and consumer protection/empowerment objectives. Therefore, they should both be specific goals in S3.
We support providing increased clarity about the meaning of “public health and safety” and including “safety” in the Object.
Therefore, we consider that S3 of a revised Act should be:
3 Object of Act
The object of this Act is to ensure high standards of public health protection, safety, and consumer protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:
(a) high degree of consumer confidence in the quality and safety of food produced, processed, sold in or exported from Australia and New Zealand;
(b) the provision of adequate information relating to food to enable consumers to make informed choices and the protection of consumers from misleading or deceptive conduct;
(c) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;
(d) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health, safety and consumer protection.
(e) for the purposes of this section, public health and safety means all 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

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

We have responded NEUTRAL to this and ALL other required reponses where we did not wish to respond.
We consider that an option of NO RESPONSE should have been provided for all questions that required a response, especially since at the start it stated that we could choise which quatisojto respsnd to.
We request that all of our NEUTRAL responses be interpreted as indicating NO RESPONSE rather than that we consider the outcome would be NEUTRAL.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We have reservations about having a more explicitly skills based-based board. It is important that there continue to be members who are skilled and also represent consumer and public health organisations. Such members bring many valuable attributes to the board, including the ability to keep up to date on consumer needs and public health developments. They are also able to counterbalance the influence of industry-focused members.

Also, we are unaware of difficulties experienced in securing the services of sufficiently skilled board members nominated by consumer and public health organisations, and note that no evidence is provided that previous board members in these categories have not had the skills necessary to carry out their duties effectively.

However, if the board structure is changed it is essential to balance skills and relevant experience and to ensure a fair and balanced representation from different stakeholders, including consumers

Efficiency should not be achieved at the expense of representation.

We are however, prepared to support:
• some reduction in board size provided that the balance remains satisfactory in terms of representatives of consumer and public health organisations, and New Zealand.
• the FSANZ CEO not being a board member.

We consider that there should be a minimum of one face-to-face board meeting a year, and support virtual meetings at other times as a cost cutting measure.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

See our comments on Q16

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

See our comments on Q16

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

Although we have concerns about some aspects of the draft Aspirations document (for example that the Vision does include "maintaining consumer confidence" and the insufficient recognition of the rapid changes occurring in how consumers purchase food) it is the most important extant statement of the views of all jurisdictions on the vision and aims for, and changes needed to, the food regulatory system.

Therefore, since the FSANZ Act is the key component of the system. It is essential that any new Act aligns very closely with, and facilitates the achievement of, the Aspirations document's vision, aims, etc.

However, we consider that most of the reform options in the RIS are focussed excessively on, and give too high a priority to, meeting industry objectives, and that this will substantially reduce the ability of the Act to achieve the Aspirations document's public health, safety and consumer protection objectives/goals that should be the highest priorities of any new Act

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 17:50:29**

About you

What is your name?

Name:
Jane Anderson

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Cider Australia Incorporated

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

As the national cider industry body, Cider Australia aims to build a sustainable category by undertaking activities that improve the quality of ciders produced and marketed in Australia. We have more than 100 member organisations including Australian agricultural producers, local and international cider makers, manufacturers and distributors.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia believes this reform process is an opportunity to improve the operation of the FSANZ Act and supports the proposed improvements advocated by Alcohol Beverages Australia in their submission.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Cider Australia supports the Alcohol Beverages Australia submission in relation to a new objective around food sustainability.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Cider Australia supports the Alcohol Beverages Australia submission in relation to the delegation of decision-making powers from Ministers to officials.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No, Cider Australia supports the Alcohol Beverages Australia position on this matter.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on this matter.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

Cider Australia has never made an application to change food standards but is considering making a joint application in the near future.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The prescriptive requirements surrounding when and how often FSANZ can provide advice to applicants is a barrier, particularly for businesses that wish to submit a one-off application.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Cider Australia supports the position of Alcohol Beverages Australia on these matters.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

Cider Australia supports the position of Alcohol Beverages Australia in relation to this matter.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Cider Australia supports the comments expressed by Alcohol Beverages Australia in their submission.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 18:00:56**

About you

What is your name?

Name:
Damian Maganja

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
The George Institute for Global Health

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The George Institute for Global Health recommends that the following key Policy Problem, not referred to in this draft Regulatory Impact Statement (RIS), be considered as a priority: that the current Food Standards Australia New Zealand Act 1991 (the Act) and the reforms proposed do not enable the food regulatory system to meet its goals of:
(i) protecting public health – particularly long-term health and preventable diet-related disease; and,
(ii) providing adequate information to enable consumers to make informed choices.

For example, there is currently little mention in the RIS of how the proposed reforms will address the current failure of the market to provide Australians and New Zealanders with a healthy food supply. This is seen by the predominance of energy-dense, nutrient-poor foods and products high in added sugars, saturated fat and sodium in the market, and the considerable burden of disease and other risk factors for disease attributable to preventable dietary risks.

This Policy Problem has been highlighted by public health and consumer groups during previous consultations and the draft RIS must be revised and updated with consideration of these concerns. The George Institute recommends each proposed component of reform be considered against this neglected Policy Problem, and for new components to be included as reform options where required. Without this focus, the Act will not effectively achieve its primary purpose of protecting public health.

Overall, The George Institute has concerns about the potential ramifications of the proposals in the draft RIS for the health of Australians and New Zealanders who rely on government regulation to ensure a healthy food supply. Two in three Australian adults and one in four children are currently overweight or obese.

Obesity is estimated to cost Australia $8.6 billion annually.i Diet-related non-communicable diseases (NCDs) such as heart disease, type 2 diabetes and some cancers are Australia's biggest killers.

The World Health Organization recommends a comprehensive suite of 'best-buy' policy interventions to promote healthier diets at a population level and prevent disease, many of which involve food regulation. These include improvements to labelling, standards for food composition and restrictions on marketing unhealthy products.ii

While there has been some implementation of these initiatives in Australia, such as the Health Star Rating front-of-pack nutrition label, voluntary salt targets from the Healthy Food Partnership, the Beverage Council's sugar reduction pledge, and industry codes marketing of unhealthy products to children, have demonstrated sub-optimal progress in delivering health benefits, largely due to their voluntary nature.iii-vii These examples highlight the importance of stronger, mandatory food regulation to improve food environments and support long-term public health protection. This includes having a Food Standards Australia New Zealand Act that supports Food Standards Australia and New Zealand (FSANZ) to contribute to further work in this area. While the RIS acknowledges the need for greater clarity in the Act to encapsulate both acute and long-term health elements, discussed on page 53, more serious consideration of long-term public health protection is required throughout the Act.

In addition, The George Institute believes current processes of cost-benefit and risk analysis underpinning government consideration of regulatory alternatives to address population diets require review. Value judgments inherent in which costs and benefits are considered in these calculations present barriers to the uptake of evidence-informed regulatory strategies to prevent diet-related disease. For example, an immediate cost to industry of submitting an application is much easier to ascribe a dollar value than the increased utility of labelling to consumers of a mandatory front-of-pack nutrition label, or the potential costs saved by individuals being supported to adopt healthier dietary patterns in the long-term.

The populations for which regulatory costs are considered are businesses, community
organisations and individuals, but this does not account for other important risks, for example, long-term costs to governments and health care systems of treating preventable NCDs.vii This is a clear oversight in judging how policy benefits society. Design of these processes may favour solutions that address immediate health and safety risks – for example, food safety regulations – but are less equipped to address the widespread, long-term impact of unhealthy diets across the population that will be felt far beyond the food regulatory system.

The limited benefits of voluntary regulation and the ongoing costs of diet-related NCDs
provide grounds for rethinking regulatory impact mechanisms. The George Institute recommends review of these mechanisms to more holistically account for the costs of inaction on unhealthy food environments and preventable diet-related disease to individuals, communities and governments.

i. PwC. Weighing the cost of obesity: A case for action. 2015. https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf
ii. World Health Organization. 'Best Buys' and Other Recommended Interventions for the Prevention and Control of Noncommunicable Diseases. 2017. https://apps.who.int/iris/handle/10665/259232
iii. Jones A et al. The performance and potential of the Australasian Health Star Rating system: a four-year review using the RE-AIM framework. ANZJPH, 2019;43(4)
iv. Rosewarne E et al. Assessing the Healthy Food Partnership's Proposed Nutrient Reformulation Targets for Foods and Beverages in Australia. Nutrients, 2020;12(5)
v. Coyle D et al. Estimating the potential impact of Australia's reformulation programme on households' sodium purchases. BMJ Nutrition, Prevention & Health, 2021.
vi. Food Regulation Standing Committee. Policy Paper: Exploring options for improving the composition of the food supply. 2020. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/policy-paper-food-supply-composition
vii. Hickey K et al.Overbranded, Underprotected: How industry self-regulation is failing to protect children from unhealthy food marketing. 2018. https://www.opc.org.au/downloads/overbranded/overbranded-underprotected.pdf
viii. Department of the Prime Minister and Cabinet. Australian Government Guide to Regulatory Impact Analysis. 2020. https://pmc.gov.au/resource-centre/regulation/australian-government-guide-regulatory-impact-analysis

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

As noted in the RIS, there is increased global recognition of the connection between sustainable food systems and population health outcomes.i This global concern is gaining momentum in Australia and New Zealand, with public health advocates and consumer groups recently calling for environmental sustainability to be addressed in Australia's current update of the Australian Dietary Guidelines. Sustainable food systems have also been recognised as a protective factor in the draft National Preventive Health Strategy.ii Consumers are also increasingly becoming aware of the environmental impact of their food choices and the broader food system.

The George Institute recommends that the food regulatory system plays a role in supporting the environmental sustainability of food systems in Australia and New Zealand. For instance, as noted by the RIS, food manufacturers are currently able to make unregulated claims regarding the environmental sustainability of products – for example, "dolphin safe" tuna – leading to situations where consumers cannot easily identify the veracity of these claims. To make a meaningful contribution to planetary health and to improve consumers' ability to make informed choices, the food regulatory system should involve government-led labelling requirements, including monitoring and enforcement, to provide objective, evidence-based ratings of environmental impact displayed on all products.

i. FAO. Sustainable food systems, Concept and framework. 2018. http://www.fao.org/3/ca2079en/CA2079EN.pdf
ii. Department of Health. Draft National Preventive Health Strategy 2021–2030. 2021. https://consultations.health.gov.au/national-preventive-health-taskforce/draft-national-preventive-health-strategy/supporting_documents/Draft%20NPHS%20March%20202

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

First Nations voices and knowledges are often missing, or go unnoticed, from decision-making processes where subsequent policy has profound impact upon communities. The profound connection to food and food practices for First Nations peoples is part of a sovereign connection with Country (land and waters). For First Nations communities, food represents more than nutrition, and provides an important social activity and opportunity to pass down knowledge from Elders to younger people and is a vital way to care for and connect with Country.

The George Institute recommends that First Nations voices and knowledges are meaningfully included in the food regulatory system. Priorities and challenges relating to food systems must be identified by and with community, and communities must be enabled and equipped to implement community-identified solutions that respect First Nations knowledges.

Recognition and application of First Nations food knowledges and practices reflects an enduring strength and resilience in ancient food cultures, including sophisticated agricultural and aquacultural techniques that have often been overlooked or poorly understood since colonisation of Australia. Recognition and integration of these practices that can supplement Western-based diets can contribute to improved health and wellbeing of Aboriginal and Torres Strait Islander communities. The George Institute recommends the Act and the food regulatory system play a role in improving health outcomes with Aboriginal and Torres Strait peoples. The system should be designed to promote measures that improve equity and protect the short- and long-term health of Aboriginal and Torres Strait Islander peoples, and these measures are enacted with communities – not separate to them.

The George Institute notes that in addition to including recognition of First Nations culture and expertise in the objectives of the Act, assessment of how food regulatory measures impact Aboriginal and Torres Strait Islander peoples more generally should be included, and engagement with communities should be ongoing to monitor impacts.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers that Option 1 would have negative outcomes for public health, given the slow current progress in using food regulation to effectively address long-term diet-related disease, but overall represents a more positive outcome than Options 2 and 3. Options 2 and 3 introduce new and potentially harmful mechanisms that will involve “less regulatory intervention” but have consequences for health outcomes. For this reason, the status quo, which the draft RIS acknowledges takes a proactive, preventive approach and has “managed to largely prevent the market failures that they are designed to address”, represents a better outcome for public health and informing consumers than proposed Options 2 and 3.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The George Institute believes the current food supply fails to provide a healthy food environment for the community, with unhealthy diets a leading cause of death and disability in both Australia and New Zealand. Beyond direct health outcomes and their associated treatment costs, conditions such as overweight and obesity, type 2 diabetes and heart disease, impose significant economic costs on individuals, governments and the private sector due to productivity losses. These risks already occur – and are extremely likely to continue – with enormous consequences for society. In Australia alone, obesity is estimated to cost Australia $8.6 billion a year.i The George Institute notes that the options and components proposed elsewhere in this draft RIS have potential to significantly increase the direct and indirect costs of this health burden.

i. PwC. Weighing the cost of obesity: A case for action. 2015. https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

The George Institute wishes to note that rigor, transparency and substantiation in estimating any claims of cost of delays will be required to satisfy stakeholders and the public. Current examples in the RIS are not representative of the application process in general. They also do not meet the Australian Government Guide to Regulatory Impact Analysis requirement that all data sources and calculation methods are transparent, and that any gaps or limitations in the data are discussed and assumptions disclosed in every case.i The clearly inappropriate extrapolation of an unsubstantiated claim of considerable cost to industry on p. 7 of the draft RIS provides an exemplar of our concerns. It is also clear that “opportunity costs”, theoretically incurred while an application is processed, do not include consideration of the benefit of a proactive and preventive approach to public health. Nor does it consider the harm and cost that individuals, communities and governments may be exposed to were any deliberative processes to be accelerated or replaced (as with Option 2).

In assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. The 2010 reportii. prepared for FSANZ during the consideration of pregnancy warning labels on alcohol is an example of such an analysis. The report conservatively estimated an additional $66 million cost per annum to Australian taxpayers for additional services required for new fetal alcohol spectrum disorder

births. Given the lengthy delay in approving and applying pregnancy warning labels, this represents a considerable and increasingly unsustainable cost to individuals and governments.

i. Department of the Prime Minister and Cabinet. Australian Government Guide to Regulatory Impact Analysis. 2020. https://pmc.gov.au/resource-centre/regulation/australian-government-guide-regulatory-impact-analysis
ii. Health Technology Analysts. Fetal alcohol spectrum disorder (FASD), Exploratory economic analysis of different prevention strategies in Australia and New Zealand. 2010. https://www.foodstandards.gov.au/about/ips/foilog/documents/Health%20Technology%20Analysts%20Pty%20Ltd_Fetal%20alcohol%20spectrum%20disorder%20(FASD).

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The George Institute endorses the Obesity Policy Coalition's response to this question:

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:
Costs
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
• 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
• The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
Benefits:
• The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
• The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
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Please provide any comments about these data in the box below.:

The George Institute supports the material submitted by the Obesity Policy Coalition:

Quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented. Analysis for Options 2 and 3 must consider the effect of proposed reforms, both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol
The recent 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 Australia and New Zealand Ministerial Forum on Food Regulation agreed that a mandatory standard 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. Time to complete the proposal was a few months under two years.
The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement (DRIS) for Pregnancy Warning Labels on Packaged Alcoholic Beverages, published October 2018. This DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at AUD$1.18 billion per year in Australia and NZ$171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at AUD$75,662. 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 of 1.18% of cases, the economic cost per year incurred for each year of delay is estimated at AUS$13.8 million, while the health impact is 183 additional individuals living with FASD.
The RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be undertaken for Options 2 and 3. With analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute strongly believes that, taken as a package, Option 2, Component 1 represents a negative outcome for public health and consumers as it suggests an elevation of industry's commercial interests at the potential expense of the priority that should be given to public health and safety, as the Act outlines. Limited elements of this component do make a positive contribution and The George Institute's support for those should not be taken as endorsement of the current proposal. We support the Obesity Policy Coalition's positions on each element of Option 2 Component 1, as detailed below:

1. Clarifying the definition of public health to include prevention of long-term diet-related disease: The George Institute supports clarifying S3 of the Act by including a definition of protecting public health and safety as per 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." The George Institute also supports aligning wording around public health across S3 and S18 to "a high standard of safety and public health protection".

2. Rejecting introduction of trade as a core goal: The George Institute strongly opposes this element. The elevation of trade is unnecessary; the draft RIS acknowledges that the status quo, which does not include trade as a core objective, 'has delivered good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food system and include the promotion of consistency between domestic and international food standards when making decisions. Beyond this, elevating the importance of trade as a core objective has the potential to promote industry profit as a key outcome while increasing barriers to evidence-based food regulatory measures that will promote and protect public health. Evidence of this can already be seen, for example, in consideration of whether to make the Health Star Rating front-of-pack nutrition labelling system mandatory. Despite consumers currently only receiving the benefit of the Health Star Rating System on 41% of products,i food industry peak associations have actively opposed mandating of the system on trade grounds. In recognition of the occasional conflicts between public health and trade, it is important that FSANZ has a clearly articulated mandate to promote long-term health outcomes over trade and economic outcomes.

3. Inclusion of environmental sustainability: The George Institute supports the inclusion of environmental sustainability as a core goal of the Act, if measures proposed do not compromise the prioritisation of public health goals. Appropriate measures include the regulation of false, specious or unsubstantiated claims so that the processed food industry cannot 'greenwash' unhealthy products.

4. Inclusion of First Nations culture and expertise: The George Institute supports the inclusion of First Nations culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products. It is crucial that First Nations knowledges are respected, community engagement is meaningful, and solutions are self-determined.

5. Including the regulatory impact on industry, particularly small business, as a factor for which FSANZ must have regard: The George Institute strongly opposes the inclusion of regulatory impact on industry as a factor for which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. As demonstrated extensively throughout the RIS, the impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

6. Further changes to S18 and role of FSANZ: Option 3, Component 4 also appears to be an amendment to the objectives or items that FSANZ for which must have regard under S18. The George Institute does not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

7. Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure: The George Institute support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

The George Institute support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

The George Institute do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS, the Food Ministers' Meeting is the "body that sets the policy direction for the joint food standards system" (p.15) and this role should remain in the Food Ministers' hands.

The George Institute do not support a broad extension to FSANZ's functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

i. Shahid M et al. Uptake of Australia's Health Star Rating System 2014–2019. Nutrients, 2020;12(6)

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

As carbon contributors, the food system and its regulators have a responsibility to decarbonise the sector as much as possible. The George Institute supports the inclusion of sustainability in FSANZ's objectives – with the understanding that this encompasses social, economic and environmental needs. The George Institute, however, recommends that the term 'sustainability' be used within the context of values statements rather than policy setting. Where policy is concerned, we recommend the terminology be specific in terms of carbon emissions reductions, rather than vague use of the term sustainability. This might include the consideration of packaging and transport.

Any reference to sustainability must be trusted by and meaningful to consumers, and independently assessed through rigorous and transparent processes. We also caution that these domains cannot be traded or balanced against each other – improved environmental outcomes do not justify unhealthy food environments, nor should environmental claims be used to promote unhealthy products.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Consumer interest in environmental sustainability is booming, both in a domestic context and overseas. As above, sustainability should be understood as the ambition to balance social, economic and environmental outcomes within the food system. However, where possible it is important to meaningfully reduce carbon emissions and encourage sustainable practices through regulatory approaches that improve both environmental outcomes and long-term health outcomes. Importantly, greater focus on environmental sustainability will future-proof our agricultural and food sectors in a rapidly changing world.

Many of the environmentally and socially ethical products are imported; seizing the opportunity to support and incorporate "sustainability" opens markets both in Australia and overseas. This depends, however, on a trusted and meaningful definition and independent and rigorous assessment. Greenwashing will not be accepted by domestic consumers or in many foreign markets.

In addition, advanced markets – for example, the European Union (EU) – are likely to restrict or place tariffs on imports that do not meaningfully demonstrate sustainability as an objective and as a practice. The George Institute recommends our food system take an adaptive approach to sustainability that can enable Australia and New Zealand to deliver on our international obligations to reduce carbon emissions and be a player in the global market. Earlier this year, the EU resolved to put a carbon price on certain goods imported from outside the EU if these countries are not ambitious enough about climate change. In the Asia-Pacific, the CSIRO predicts opportunities driven by growth and consumer preferences for sustainable and natural foods could be worth $25 billion by 2030. If the Australia and New Zealand food system makes changes to support environmental sustainability, we could command a premium in export markets. Conversely, failure to do so could see a significant drop in desirability of our exports in the global market.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

The George Institute believes it is crucial that First Nations and Maori communities are meaningfully engaged regarding policies that will impact their lives. The George Institute strongly recommends that separate consultation on this topic be undertaken with community Elders, groups and representatives, with a process that respects knowledges and expertise. The George Institute strongly suggests that:
• any engagement be appropriately and sensitively developed, include leadership from within communities;
• focus on facilitating responses from a broad cross-section of communities – the language in this draft RIS is exclusive and alienating;
• any feedback provided by people and organisations through any engagement not be balanced against or overridden by any pre-existing priorities of this review, implicit or explicit;
• no one narrative within that engagement be prioritised and/or taken as representing the whole experience and perspective of First Nations and Maori peoples; and,
• any engagement not be limited to recognition of culture and expertise, or economic opportunities, but provide an opportunity to hear and address other aspects of the food regulatory system that impact upon First Nations and Maori people and communities.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

The George Institute believes it is crucial that First Nations and Maori communities are meaningfully engaged regarding policies that will impact their lives. The George Institute strongly recommends that separate consultation on this topic be undertaken with community Elders, groups and representatives, with a process that respects knowledges and expertise. The George Institute strongly suggests that:
• any engagement be appropriately and sensitively developed, include leadership from within communities;
• focus on facilitating responses from a broad cross-section of communities – the language in this draft RIS is exclusive and alienating;
• any feedback provided by people and organisations through any engagement not be balanced against or overridden by any pre-existing priorities of this review, implicit or explicit;
• no one narrative within that engagement be prioritised and/or taken as representing the whole experience and perspective of First Nations and Maori peoples; and,

• any engagement not be limited to recognition of culture and expertise, or economic opportunities, but provide an opportunity to hear and address other aspects of the food regulatory system that impact upon First Nations and Maori people and communities.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers that Component 2 represents a negative outcome for public health and consumers. In principle, some of the suggestions within this component may be appropriate, however others – particularly those that increase risks to public health through reduced regulatory oversight – are unacceptable. In combination, and as presented here, they result in considerably increased risk to individuals and to governments.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system. The consequences of implementing this component are serious and The George Institute cannot support any move that increases the risk of death, disease and disability to the population. These proposals, if enacted, will undermine the “strong preventative focus” of our food regulatory system, the very aspect that is acknowledged as underpinning its effectiveness and economic success to date.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The George Institute is strongly opposed to this proposal and agrees with the Obesity Policy Coalition that this Component already allows for the FSANZ Board to delegate to the CEO and for Ministers to delegate to departmental officials. Adding a third pillar, whereby Ministers can delegate to the FSANZ Board, further centralises decision making. This gives too much power to the FSANZ CEO and the Board, removing oversight and authority from jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the Aspirations for the Food Regulatory System, which state that Ministers will lead the meeting of those aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

None. The George Institute considers that codes of practice and attempts at diminished oversight, self-regulation or co-regulation, fail consumers and risk public safety, health and confidence in the food system – they must not replace food standards. The George Institute recommends no issues be relegated to codes of practice or guidelines. Rather, jurisdictions and agencies must be resourced, empowered and encouraged to effectively, efficiently and proactively address and resolve regulatory issues.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The George Institute does not have such data. However, we wish to note that rigour, transparency and substantiation in estimating any claims of costs will be required to satisfy stakeholders and the public, and to meet the requirements specified in the Australian Government Guide to Regulatory Impact Analysis. Current examples in the draft RIS do not meet these criteria.

The George Institute agrees with the Obesity Policy Coalition in suggesting that assessments of the cost of administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer’s expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs above this process should be considered as part of this RIS analysis of administrative burden.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

The George Institute does not have such data. However, we wish to note that rigour, transparency and substantiation in estimating any claims of savings will be required to satisfy stakeholders and the public, and to meet the requirements specified in the Australian Government Guide to Regulatory Impact Analysis. Current examples in the draft RIS do not meet these criteria.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers that the implementation of regulatory sandboxes would have a negative impact and we strongly oppose the introduction of this component. We reject the idea that industry has a need to experiment with consumers' health and lives and insist that the food regulatory system remain proactive and prevention-focused.

There is insufficient information in the RIS to justify the appropriateness of sandboxes in a food regulatory context – and there are no comparable examples worldwide. Material drawn from context of Fintech in the United Kingdom is not comparable given the different risks to public health and safety. Regulatory sandboxes are entirely inappropriate in a food regulatory context and will compromise safeguards that protect the health of the community, as well as the reputations of industry and our domestic economy.

The "strong preventative focus" of the Act is a critical component of our food system. This helps protect all stakeholders. The draft RIS itself makes it clear that the removal of rigorous assessment by FSANZ prior to novel products entering the market means that safety is not guaranteed, although this distinct implication is avoided in the text.

In addition, the concept of regulatory sandboxes necessarily requires ongoing monitoring and guidance from regulators, differentiating a sandbox from other regulatory waivers and exemptions.i Clear guidance and rigorous assessment and decision making must also determine admission to a regulatory sandbox. These must be acknowledged as an additional 'cost' on FSANZ's resources.

The George Institute further rejects the need to make it easier for industry to develop new processes and ingredients to add to foods, at the potential cost of public health. It should be noted that existing processes and additives are already overwhelmingly geared towards increasing the supply of ultra-processed foods, which are harmful to human health and the environment.

i. Zetzsche DA et al. Regulating a revolution: From regulatory sandboxes to smart regulation. Fordham J. Corp. & Fin. L, 2017 ;23(1)

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

The George Institute does not support the use of regulatory sandboxes. Regulatory sandboxes are entirely inappropriate in a food regulatory context and will compromise safeguards that protect the health of the community, as well as the reputations of industry and our domestic economy.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall, The George Institute considers that this component will have a negative impact, given the demonstrated inadequacies in resourcing for FSANZ that already leave other integral functions neglected. We strongly support FSANZ focussing additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

The George Institute also supports specific actions that will increase opportunities for FSANZ to undertake more timely, holistic and regular reviews of food standards, as outlined by the Obesity Policy Coalition:

We support FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

We ask that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best-practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. We support efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

The George Institute does not support this expansion of FSANZ's role and responsibilities. FSANZ must focus on its key priority of developing 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.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers that there are largely neutral outcomes from this component for public health; it could be positive were public health and academia also able to access information (for a reduced/waived fee) alongside food safety bodies and industry. A further discussion of fee-for-service arrangements is at question 26.

The George Institute also cautions against any additional activities that will draw resourcing away from critical functions and responsibilities that are already deprioritised by FSANZ.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Not-for-profit organisations such as public health and consumer groups, individual researchers, advocates and other organisations dedicated to health research and promotion typically do not have funding to pursue such services, nor are they likely to receive financial benefit from their use.

If a fee-for-service or cost recovery model is introduced, The George Institute recommends that such bodies have access to fee waivers or reductions for work that is in the public interest, is for public benefit and will be publicly reported. Such arrangements exist for other data services available from the National Heart Foundation of Australia and The George Institute, for example. Small food industry businesses that are genuinely independent of larger operators could benefit from reductions in fees, noting that the motive is still profit so some cost-recovery is appropriate.

The George Institute recommends that FSANZ also has regard to the source and role of funders of bodies seeking fee waivers or reductions. “Astroturfing” – the channelling of funds from private and other for-profit enterprises to ostensibly consumer or health-focussed but industry-aligned grassroots groups – should be identified and excluded.

In addition, The George Institute recommends FSANZ resources should not be redirected to prioritise fee-for-service activities, as has occurred with other government agencies. This will reduce the capacity of FSANZ to achieve its primary objectives and threaten its independence.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute regards Option 2, Component 6, as currently framed, as providing a negative outcome. We have considerable concerns that a smaller, “skills-based” Board will result in less representation of public health and consumer interests, which is critical to ensure the Act and FSANZ achieve their objectives. This is particularly the case when considered alongside suggestions that substantially reduce the objectivity and transparency of Board appointments. The George Institute does not support reducing appointments from external organisations, removing the need to seek nominations from external organisations or removing sign-off from all Food Ministers. Other options, including virtual board meetings, will reduce costs of supporting the Board without removing the necessary oversight provided.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The George Institute considers that when taken as a whole, Option 2 significantly increases risks to all stakeholders, as partially acknowledged in the draft RIS, by undermining the public health objectives of the Act and reducing transparency, rigor and objectivity in processes.

This includes risks to:
• Individuals and communities – increased risk of death, disease and disability, associated with increased health care costs and reduced capacity to work.
• Industry – increased risk of reputational damage and associated loss of revenue.
• Governments – increased risk of high health care costs, reduced productivity and reputational damage due to failure to protect public health and safety.

The George Institute believes the overarching risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease. This option prioritises profit above public health and in effect transfers costs from private industry to the community and to governments.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The George Institute recommends that the above risks to the public, industry and governments (death, disability and disease; health care; decreased productivity; reputational damage) be acknowledged as costs that will be incurred in the process of yielding some private benefit to industry. This essentially shifts burden from

industry to the community and to government.

The George Institute supports the Obesity Policy Coalition on their position on this matter. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. These can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
• 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. These costs can be seen in measures that are either not progressed at all or that do not represent best-practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether Option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under Option 2.
• The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
• The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment.
Analyses assessing these costs must include short- and long-term health impacts, and consider the impact of Option 2 on the number of unhealthy foods that are sold and promoted to consumers.

The George Institute does not agree with the statement in the RIS that there is a clear net benefit to Component 1, and that the proposed changes would not impose any costs on stakeholders. The cost/benefit assessment for Component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The George Institute recommends the RIS must assess these costs, both to consumers' health and the economic cost for government.

The RIS states that it will analyse the impact of policy options on public health, but then fails to do this. The George Institute recommends the RIS be amended to include detailed assessment of the costs to public health and to consumers and governments of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, Component 1, as compared to Option 1 (status quo).

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

The George Institute supports the Obesity Policy Coalition in their position on this matter:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

There is considerable data and analysis publicly available and held by government to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both qualitative and quantitative perspectives. This data should be used as the foundation for a detailed assessment in the RIS of the impact of the proposed reforms on public health outcomes.

We know how many Australians have a poor diet, are above a healthy weight and have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. 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 RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of Australians (and New Zealanders) who have a poor diet, overweight and obesity and 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 RIS 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.i If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent an additional cost of $21 million per year.

i. PwC. Weighing the cost of obesity: A case for action. 2015. https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The George Institute supports the Obesity Policy Coalition in their position on this matter:

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread

public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

The George Institute supports the Obesity Policy Coalition in their position on this matter:

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system. The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

The George Institute's experience aligns with that of the Obesity Policy Coalition and other public health and consumer representatives.

The George Institute does not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

The George Institute engages with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the current prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The George Institute notes that there is a clear prioritisation of industry applications over public health proposals by FSANZ. This means that where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for already under-resourced public health organisations and creates an advantage for large food corporations that have significant resources to use to influence the process to their commercial benefit. The result is that regulation for Australians often lags behind evidence on and best practice for long-term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include specific review processes for public health and consumer representatives to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

Other significant constraints for people and organisations aiming to ensure that public health and consumer interests are prioritised include:
• Inadequate resourcing of FSANZ and jurisdictional agencies to monitor and enforce standards, proactively and comprehensively assess risks and work towards protecting public health and consumers.
• The standard of evidence offered by industry stakeholders and accepted by governments/regulators, as discussed elsewhere in this submission – there is insufficient transparency, rigour and consideration of conflict of interests when assessing industry claims of cost and benefit. It must also be noted that the benefits are often private (i.e. for industry) while the costs are public (i.e. incurred by individuals and governments).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

The George Institute wishes to clearly state that none of the pathways proposed would benefit public health and consumers. The RIS should be revised to include a public health pathway to enable public health organisations to request changes to regulation that will protect consumers.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers this represents a negative outcome. If equivalent or improved consumer protection can be assured, it may prove positive. However, the current state-based system is functioning effectively and the move to centralise functions has not been adequately justified. In addition, there are no assurances that FSANZ will be adequately resourced to undertake such a role and without redirecting from other critical functions that it alone can or should provide.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

The George Institute does not possess this data, but cautions that any attempt to offset the costs of food incidents and recalls to industry are inappropriate. This will particularly be the case should oversight be lessened and incidents/recalls and other threats to health and safety inevitably increase. The community already bears the burden of disease, disability, death and associated costs and must not compensate industry for causing such.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The George Institute considers that this Component represents a negative outcome. The bundling of several different mechanisms under one Component is unfortunate as several are worthy of further consideration for their utility to industry and public health objectives, however others are unacceptable.

The George Institute agrees with the Obesity Policy Coalition's positions:

Statement of intent alongside food standards:

The George Institute supports FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines:

Whilst The George Institute supports independent industry guidelines developed by FSANZ, we do not support this process being led by industry itself. We strongly recommend that industry does not have a role in developing the guidance provided by FSANZ.

Access to binding standards, clarification of standards or specific guidance on interpretative issues must be equal for all stakeholders – consumers, public health stakeholders and industry – and not just a right for industry. No one stakeholder should be prioritised over others by FSANZ when providing advice or support.

FSANZ to assist businesses to prepare dossier to substantiate general health claims:

The George Institute does not support the current system of self-substantiation but agrees that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is performed before products are on the market, so that unsubstantiated claims of food-health relationships are not made before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine:

The George Institute does not support changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the Acts would streamline systems and create consistency for industry and consumers, the power to make this determination should not sit with a single minister as this undermines the independence and transparency of decision making.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

The George Institute considers that this would have a negative outcome. We do not support FSANZ having an enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Aside from this, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this Component 4 and as such this is a negative outcome. However, The George Institute does not support any changes to the objectives in S3 or S18, or to the items for which FSANZ must have regard in S18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The George Institute supports the Obesity Policy Coalition's position on this matter, i.e. that the cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas beyond its current remit. This is likely to result in a further deprioritisation of proposals and achieving public health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

The George Institute does not support the current prioritisation of paid industry applications ahead of public health proposals and we do not support the introduction of further cost-recovery mechanisms, which will likely result in additional prioritisation of those paid activities at the expense of public health measures and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

The George Institute further notes there is nothing in Option 3 to address the inequality between industry applications and public health proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p.36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p.37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The George Institute wishes to make clear its position: the policy approaches presented in the draft RIS do not represent the full spectrum of policy approaches available and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers with adequate information to make informed choices. The proposed policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations. It is particularly hard to reconcile the proposals in the draft RIS with the statement that "food safety and quality no longer guarantee a competitive advantage for Australian and New Zealand food businesses" – these proposals effectively undermine those

processes that ensure safety and quality, as well as long-term public health yet further, and will not address the identified problem.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health. As such, the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Additional approaches must be developed to address the Policy Problem that this draft RIS does not consider: that in its current form, the Act, and the proposed reforms assessed in the RIS, do not enable the food regulatory system to meet its goals of protecting public health (particularly long-term health and preventable diet-related disease), and providing adequate information to enable consumers to make informed choices.

We strongly support reform to improve the food regulatory system, but this must be done in a way that better protects long-term public health. The FSANZ Act review must be refocused to put public health first. This must include an independent review to fully assess the impact on long-term public health of all proposed options, including the health and economic costs and benefits to consumers and governments. The draft RIS must be amended to incorporate the policy problem above, the findings of this independent review and to identify and discuss additional reforms to address long-term public health.

The George Institute recommends the following policy approaches be comprehensively investigated:

1. Clearly defining public health to include short and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised.
2. Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
3. Resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health.
4. Setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work.
5. Removing inconsistencies in interpretation and enforcement between jurisdictions. This could be done without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law.
6. Reviewing the health claims system as a whole, to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

The George Institute considers that none of these components, on the whole, are adequate; thus none are a priority. Those that contain potentially positive elements are not a priority compared to other approaches not canvassed here but previously raised by public health and consumer representatives (as per Q47).

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

The George Institute regard none of the options presented in this draft RIS as aligning with important guiding aspects of the draft Aspirations – the proposals, as presented:
• Do not in any meaningful way address the "range of challenges… relating to… poor nutrition and obesity continuing to impact on public health".
• Actively undermine efforts to "support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues" and ensure that "the overriding priority will always be protecting public health and safety".

Rather, the options in the draft RIS fail to provide protection from diet-related disease and will further enable and entrench the prioritisation of industry profit over the health and wellbeing of the community. The mechanisms proposed in the draft RIS make clear that industry will continue to be supported to the detriment of the high-level objectives of the food regulatory system (as outlined in the draft Aspirations, previous Ministerial policy directions and current and proposed legislation) to protect the community from products that contribute to disease, disability and death. The acceptance of unsubstantiated industry claims of "costs" and the inappropriate use of such claims (as per p. 8 of the draft RIS), alongside the denial of the very real and proven costs to the community and government of continued inaction on diet-related disease, further belie the statement in the draft Aspirations that changes to the regulatory system will be "informed by evidence".

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 18:10:18**

About you

What is your name?

Name:
Andrea Schmidtke

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:
N/A

What is your organisation?

Organisation:
Obesity Policy Coalition

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
N/A

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Obesity Policy Coalition is a partnership between Cancer Council Victoria, Diabetes Victoria, VicHealth and the Global Obesity Centre at Deakin University, a World Health Organization Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS has not considered the following policy problems:
1. The Act in its current form does not enable the food regulatory system to meet its primary objective of protecting public health, specifically long-term health and preventable diet-related disease.
2. The Act in its current form does not enable the food regulatory system to meet another of its primary objectives - the provision of adequate information to enable consumers to make informed choices.

The RIS must be amended to include these policy problems to fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities.

The RIS also fails to acknowledge the very real threat of poor diets, which lead to overweight/obesity, 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).

Current arrangements undermine the primary purpose of the Act because they are primarily focused on the interests of the food industry and short-term public health issues and are not fit for purpose to protect long term public health, especially diet-related preventable disease. This manifests in many ways, including by prioritising industry applications ahead of proposals to benefit public health, by failing to provide a fit for purpose pathway for public health organisations to seek amendment and introduction of food standards, and by allowing the food industry to self-substantiate evidence of health claims.

The RIS must be revised to include these policy problems, to assess each proposed component of reform against them, and to consider new components that are required to address them. If this is not done, the Act will not effectively protect public health and it will not provide for adequate information to enable consumers to
make informed choices. As a consequence, it will not achieve its primary purpose.
By failing to consider these policy problems, the RIS also fails to fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

We note that the RIS says (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. This analysis must be done throughout the RIS, with the same or more detailed analysis than is provided in relation to the impact on the food industry. We recommend an independent review is commissioned to undertake this analysis, including the health and economic costs and benefits to consumers and governments. The draft RIS must then be amended to incorporate the policy problems listed above, the findings of this independent review and to identify additional reforms to address long-term public health.

We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness -- and this protection must be maintained. However, Australians are not effectively protected from long-term health impacts linked to food and diets. 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 7.3% to the burden of disease. Around two thirds of Australian adults and one quarter 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. In addition, 47.8% of Australian adults exceed the World Health Organization's recommendation for free sugar intake, and 90% of Australians older than 15 have experienced dental decay in their permanent teeth.

The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will make an important contribution to improving diets, reducing overweight and obesity, as well as related diseases such as type two diabetes, cardiovascular disease and cancer, thereby effectively protecting long-term public health into the future.

We also recommend that RIS is revised to incorporate a health equity lens and analyses differential impact. As a regulatory tool, the Act has the potential to have the most benefit for Australians experiencing greater barriers to healthy diets and achieving good health. There are significant inequities in poor diet, overweight and obesity, with Australians from lower socioeconomic areas, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas more likely to be above a healthy weight.

We are not in a position to provide a response from a New Zealand perspective specifically but expect that these issues are equally relevant for both jurisdictions.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.

Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
o able to be independently verified by reference to clear and consistent standards
o not used to promote foods that are unhealthy overall

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect Aboriginal and Torres Strait Islander people more generally. The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

We recommend that the Department consult directly with Aboriginal and Torres Strait Islander organisations in Australia and with Maori tangata whenua of New Zealand on this issue.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1, the current system, represents a negative outcome for public health, and we strongly support reforms that will improve the food regulatory system and better protect public health. The current system is, however, a better option than the changes proposed in Options 2 and 3.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect Australian consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable diseases.

Key failings of the current system are:

• Paid industry applications to modify standards are prioritised ahead of proposals that are likely to have public health benefit, resulting in significant delays in progressing public health measures.
• The Act does not provide a clear, practical and timely pathway that is designed for public health to seek timely amendments to standards to address long-term public health issues, meaning that key public health issues are not considered at all or that Australia falls significantly behind best practice.
• The approach to regulating and enforcing health claims is not adequate, as it relies on industry self-substantiation and is not effectively and consistently enforced.

Despite the overall negative impact of the status quo, and our support for reform that would improve the food regulatory system, in our view the current system is a better outcome for public health than options 2 or 3 presented in the RIS.

While the current system prioritises industry interests ahead of public health, the proposed options 2 and 3 in the RIS shift this balance even further, prioritising industry profits above the health of Australian consumers to an even greater extent. Options 2 and 3 enable the processed food industry to sell and promote more ultra-processed food that is harmful to health with less oversight, increase barriers to public health reform and centralise decision making, undermining the integrity of joint food regulatory system.

We support the retention and improvement of a preventive approach that assesses impact to short and long-term health and safety before food can be sold. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred. As the draft RIS notes, a system that requires industry to demonstrate that substances are safe before they can be used is the most effective system of harm prevention.

We fully support a strong, effective food regulatory system that protects the health of all Australians, and we agree with the statement in the RIS that the Act is dated and that its effectiveness is diminishing. We support some elements of options 2 and 3, where they may improve efficiency without increasing risks to public health and to consumer information. Overall, however, the proposed reforms will not create a food regulatory system that is fit for purpose in protecting public health. Instead, the reforms prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australians and on Australia's health system.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long-term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

The independent review and the RIS must include assessment of these risks:

RISKS TO CONSUMERS AND PUBLIC HEALTH

Key risks to consumers and to public health in retaining the status quo are:

• the health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease and dental health. These health risks are the higher risk of poor diet, overweight and obesity, dental decay and diet and weight-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

These health issues are also linked to economic risk, as we know that overweight and obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS – the RIS must be amended to include detailed assessment of these risks.

• the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk. This should be compared to an analysis of the economic impacts of an improved food supply and a reduction in diet-related preventable disease.
• the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 8.
• the health and economic risks of limited or confusing information on product packaging that reduces consumer capacity to make informed choices.

RISKS TO GOVERNMENT
A key risk borne by government is the significant economic cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these risk factors in the community. The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity) (see https://www.pwc.com.au/publications/healthcare-obesity.html). A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, obesity and related preventable disease, in Australian children and adults, will incur significant economic costs for all Australian governments. These risks must be addressed and quantified in the RIS analysis.

The cost of poor dental health that is borne by governments must also be considered.

RISKS TO INDUSTRY
We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost.

We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable. 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 all analysis in the RIS currently meets that requirement.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

We do not have relevant data. We note that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable, not based solely on self-reported industry data, and must be representative of the application process overall, not based on isolated examples.

The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board (see costings on p7 of the RIS, for example). This approach cannot be used to demonstrate costs associated with the current system and is likely to lead to inflated, inaccurate figures. Further, the RIS assessment of the costs to industry of regulatory compliance do not meet the requirements 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.

In assessing the opportunity costs to industry, the RIS must also consider the benefit of a preventive and comprehensive approach, and the health and economic costs incurred by individuals and governments if the existing approval processes are adapted to remove or weaken oversight.

As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments, as well as industry. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long- term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

Costs and benefits that must be considered for option 1 include:
COSTS
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
• 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
• 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.
BENEFITS
• 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

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the likely effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make it more difficult to implement public health measures or result in measures that are weaker and do not reflect best practice.

CASE STUDY: PREGNANCY WARNING LABELS ON ALCOHOL
The recent 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 RIS 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.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long-term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

Key risks to consumers and to public health in retaining the status quo are:

• the health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks and impacts are inequitably distributed across the population and are more likely to be experienced by lower socioeconomic groups, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and to ensure mandatory food labelling to enable consumers to make informed choices that benefit their diet and health.
• These health issues are also linked to economic risk, as we know that overweight and obesity, and diet-related preventable disease, including dental health, lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
• The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include analysis of this risk.
• The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to

existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 8.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 2, component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures. Overall option 2, component 1 results in a negative outcome for public health. Some small elements, however, do make a positive contribution and we will discuss each element of this component in turn.

OBJECTS & FUNCTIONS TO WHIC FSANZ MUST HAVE REGARD

1.Clarification of definition of public health

We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

We strongly oppose this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good '...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to Australia adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where Australia lags behind in public health protection, when the draft Aspirations of the Food Regulation System identifies the goal of becoming 'a world-class system'. .

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

We support the inclusion of sustainability as a core goal of the Act. However, in doing so it is critical that sustainability cannot be used opportunistically by the food industry in a way that prioritises profit over public health. For example, the Act must ensure the processed food industry cannot use sustainability as a way to promote unhealthy foods that have a negative impact on health, such as marketing unhealthy foods as produced sustainably or having low environmental impact. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

We support the inclusion of Indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products. We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander organisations in Australia, and Maori organisations in New Zealand.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. A major impact of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

5. Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ FUNCTIONS
We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

Food Ministers' Meeting must meet to request a review of a draft regulatory measure: We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure. We recommend that the Food Ministers Meeting can request a review of a draft regulatory measure if it decides that FSANZ did not adequately consider one of its objectives or factors to which it must have regard, including Ministerial policy guidelines. The Act should also include clear procedural steps that must be met, including that the Food Ministers' should explain how they decided FSANZ failed to properly consider its objectives and factors to which they must have regard.

COSTS AND BENEFITS OF COMPONENT 1
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and regulatory impact considerations and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo). See our response to question 8 for an example of how these costs can be assessed.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We recommend that FSANZ adopts a definition of sustainability that considers health, social, environmental and ecological impacts both now and into the future. This must be designed so that protection of current and future public health remains the primary goal, and sustainability is relevant where it supports public health objectives.

Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, such as using sustainability claims as a marketing tactic for those products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability must not be permitted.

Sustainable diets protect the climate, ecosystems and biodiversity while also ensuring food security and culturally acceptable, accessible, affordable nutrition for human health. Economic and population growth are expected to increase greenhouse gas intensive diets. Diets that are consistent with recommendations for good health are also likely to have lower environmental impacts compared to the current Australian diet, since they encourage plant foods; limit animal foods and energy dense, nutrient poor foods; and recommend energy balance.

Current diets and food systems contribute to global warming and environmental degradation leading to climate change; oil, water and nutrient scarcity; land degradation; food insecurity; food waste; and biodiversity loss. The global food system is failing to meet nutritional needs and is increasing pressure on planetary health. At the current rate of consumption, studies suggest there will need to be 70-100% more food by 2050.

There is a growing recognition of the need for policies and practices that foster ecologically sustainable production and consumption of food. Two complementary approaches are required. The first is to change consumer demand for a more environmentally sustainable food supply. The second is to work with primary producers, the food industry and government to lead changes in the food system to make its processes and outputs ecologically sustainable. FSANZ and the Act have a key role to play in creating a food system that is ecologically and environmentally sustainable.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

We do not have the expertise to comment on this question.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

We support the inclusion of Indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products.

We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander organisations in Australia, and Maori organisations in New Zealand.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

We do not have the expertise to comment on this question.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for Australian governments, through increased health expenditure.

We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto Australian consumers. We do not support this and will discuss each element of component 2 in turn.

CODES OF PRACTIVE AND GUIDELINES
We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

RISK FRAMEWORK FOR APPLICAITONS AND PROPOSALS
In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:
• Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease.
• While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
• We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.
This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

DELEGATION BY FSANZ BOARD & FOOD MINISTERS MEETING
We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process.

Any new decision-making process should also be subject to review after a period of operation.

It is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

NEW PRODUCT APPROVAL PATHWAYS
Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). There is also no public health pathway for new or amended food standards to protect public health.

RISK ASSESSMENTS FROM OVERSEAS - AUTOMATIC ADOPTION & MINIMAL CHECKS
We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that Australia should be aiming for. In many cases Australia will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the Australian context.

We note that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will ‘….undertake minimal assessments of the suitability of the standards within the Australian-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues and must include a detailed assessment of the Australian context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

INDUSTRY-LED PATHWAYS
We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are only appropriate for information that explains how to implement food standards. Mandatory, government-led codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure all jurisdictions in the joint food regulatory system have oversight over these forms of food regulatory measures and to ensure there is universal adoption of them by industry so there is equity across businesses and industries.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We do not have this data, but we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs over and above this process should be considered as part of this RIS analysis of administrative burden. This is consistent with the requirement in the Australian Government's Regulatory Burden Measurement Framework (2020) that business as usual costs cannot be included when quantifying the regulatory burden on industry.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 19. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in Australia. Adopting international risk assessments risks lowering the standard of protection in Australia, resulting in Australia falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must protect health and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no detailed analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it would be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including health claims. We do not accept the view that rules around health claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component. We are concerned about reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards and concentrate additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

FSANZ TO UNDERTAKE REGULAR REVIEWS OF FOOD STANDARDS
We support FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

We ask that the RIS incorporate a specific public health and consumer review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection and in providing consumers with adequate information. This must include review of existing standards and the capacity to introduce new standards. This process must require FSANZ to consider long-term health outcomes, and how food regulation can improve diets, reduce overweight and obesity and prevent diet-related disease. The process must also recognise the resource constraints of public health organisations and enable evidence review by FSANZ. This review process should be resourced separately to industry applications and should be subject to reasonable time limits.

The review process outlined in the RIS appears to have a significant focus on reducing regulatory burden for the food industry. This system is unlikely to achieve best practice public health outcomes, as there is often an inherent conflict between effective, evidence-based public health measures and a goal to minimise regulation. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes.

EXPANDING FSANZ's FOOD SAFETY ROLE: coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials
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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, and FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ AND FOOD MINISTERS - JOINT AGENDA SETTING
We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ PARNERING WITH GOVERNMENT TO MAKE INTELLIGENE-LED DECISIONS AND REDUCE DUPLICATION OF EFFORTS
We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring, and research. Having a centralized database would ensure independence, consistency and sustainability of ongoing monitoring efforts (eg Healthy Food Partnership targets). If a fee-for-service is established for this it should take an equitable approach, ensuring that public health or consumer organisations researchers and advocates can access the data without charge or at a very minimal cost.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge, or at minimal cost, to public health researchers and public health and consumer organisations and advocates. These individuals and organisations do not have adequate resources to access data sources and are unlikely to receive a financial benefit through access. Similar arrangements for fee waivers and reductions exist for other data services available from the National Heart Foundation of Australia and The George Institute, for example.

In deciding which organisations can benefit from waived or reduced fees, a strong framework must be applied to assess the purpose and funders of organisations that present as research, information or advocacy based. "Astroturfing" - the channelling of funds from private and other for-profit enterprises to ostensibly consumer or health-focussed but industry-aligned grassroots groups - should be identified and excluded.

If a fee-for-service model is introduced, it is critically important that this service is not prioritised ahead of other FSANZ activities, and resources are not redirected. FSANZ must ensure its resources are focused on achieving its primary objectives, and that its independence is maintained.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component.

CHANGING FSANZ BOARD ARRANGEMENTS
We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills-based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

INVESTMENT INTO BUSINESS SOLUTIONS
We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label, this ensures there is immediate access to this information at the point of purchase and equal access to the information for all consumers.

NEW COST-RECOVERY MECHANISMS FOR INDUSTRY-INITITATED WORK
We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritises the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australian consumers and on Australia's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving its primary objectives of protecting public health, specifically supporting long-term population health and preventing diet-related disease, and the provision of adequate information to enable consumers to make informed choices.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform. This means that all risks to consumers and public health that we outlined in relation to option 1 also apply in relation to option 2, to an even greater extent.

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long-term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

This analysis must include the following risks:

• the health risks caused by the failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks and impacts are inequitably distributed across the population and are more likely to be experienced by lower socioeconomic groups, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and to ensure mandatory food labelling to enable consumers to make informed choices that benefit their diet and health.

• These health issues are also linked to economic risk, as we know that overweight and obesity, and diet-related preventable disease, including dental health, lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

• The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include analysis of this risk.

• The health and economic risks caused by delays in progressing public health proposals under the proposed reforms. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform, together with an assessment of how proposed reforms are likely to affect both the speed of progressing proposals, and the outcome of those processes. See more detail in our response to question 8.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1 (see response to question 7).

The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments, but also by industry.

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long-term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

This analysis must include:
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. See our response to question 8 for a case study. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
• 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
• The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
• The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers.
• The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases.

Costs and benefits of Component 1:

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have 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 RIS 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 RIS 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 RIS 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.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

No, we do not support this. The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not delay proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We regularly engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that disproportionately benefit large food companies with significant resources to engage and advocate for changes in their interests.

The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations, must enable evidence review by FSANZ, and be subject to reasonable time limits.

As an organisation, there are barriers to responding to consultations due to:
• Short deadlines comparative to size of consultation papers.
• Survey questions targeted to industry and difficult to respond to from a public health perspective (eg quantifying costs and benefits).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the Food Standards Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the States or Territories or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We disagree with the statement in the RIS that there is a 'net positive benefit' to component 1. The cost/benefit assessment for component 1 is not comprehensive. It does not assess the impact of reassigning FSANZ's resources into an area where there is no current need for FSANZ to take a role. FSANZ is currently under resourced to deliver its current remit and given the prioritisation of applications this has a negative outcome for proposals, giving FSANZ an additional role will further exacerbate this.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

OPC does not have any data on costs of food incident or recall. We reiterate that consumer safety and public health should be prioritised over commercial interests. Attempts to reduce the cost of food incidents and recalls to the food industry are not appropriate if this is achieved through lessening oversight or weakening incident responses.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incident response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this and we do not support these.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

STATEMENT OF INTENT ALONGSIDE FOOD STANDARDS
We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ TO UPDATE AND MAINTAIN INDUSTRY GUIDELINES
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, as industry should not have a role in developing the guidance provided by FSANZ.

Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ TO ASSIST BUSINESSES TO PREPARE DOSSIER TO SUBSTANTIATE GENERAL HEALTH CLAIMS

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in ensuring businesses are complying with standards. It is important that this role is done before products are on the market, so that claims of unsubstantiated food-health relationships are not made before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

MINISTER TO DETERMINE WHETHER A PRODUCT IS A FOOD OR MEDICINE
We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers, the power to make this determination should not sit with a single minister. This power should sit with a broader group that could consider categories of food/medicine in a more fulsome manner.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

N/A

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

N/A

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner and could address differences in interpretation and action by the different jurisdictions, streamline the process, and reduce inequities, for food companies and increase consumer confidence in the system. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

We disagree with the statement in the RIS that there is a 'net positive benefit' to component 3. The cost/benefit assessment for component 3 is not comprehensive. It does not assess the costs/benefits in alternative avenues for ensuring consistency in enforcement across the States and Territories, nor the cost to public health of FSANZ's resourcing being deferred into the enforcement space. FSANZ is currently under resourced to deliver its current remit and given the prioritisation of applications this has a negative outcome for proposals, giving FSANZ an additional role will further exacerbate this.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No. In considering costs and resources consumer safety and public health should be prioritised over cost-saving efforts.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18 of the Act, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

We also do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

The draft RIS states that this component 4 could create new economic opportunities for businesses. Creating new economic opportunities is not and should not be the focus of amendments to a food regulatory system which has an overarching objective of protecting public health.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes.

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further de-prioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals.

We recommend the Department of Health commission an independent review to fully assess how each of the options presented in the RIS will affect long-term public health, including diet-related preventable disease. This review must analyse the health and economic risks, costs and benefits linked to the impact on long-term public health of each option. The findings of this review must then be incorporated into the RIS and inform decision making on agreed reforms.

The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

This analysis must include:
- The costs (both in terms of consumer health and economic costs) of even further delays in progressing food regulatory measures designed to promote public health.
- The economic costs to consumers and governments, as well as industry, of poor health outcomes that are not addressed by public health food regulatory measures.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. THE POLICY APPROACHES ALSO FAIL TO REFLECT CONCERNS AND RECOMMENDATIONS PUT FORWARD BY PUBLIC HEALTH AND CONSUMER ORGANISATIONS IN EARLIER CONSULTATIONS.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future, enables consumers to make informed choices, and that enables the food regulatory system to meet the Aspirations of the food regulatory system.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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.

Policy approaches that would address this policy problem include, but are not limited to:

• Clearly defining public health to include short and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised.
• Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
• Resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health.
• Setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work.
• Removing inconsistencies in interpretation and enforcement between jurisdictions. This could be done without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law.
• Reviewing the health claims system as a whole, to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy products. This review should include oversight and

enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

None.

We do not think any of the components of Option 2 or 3 should be pursued, and certainly not prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 47).

We strongly support reform to improve the food regulatory system, but this must be done in a way that better protects long-term public health. The FSANZ Act review must be refocused to put public health first. This must include an independent review to fully assess the impact on long-term public health of all proposed options, including the health and economic costs and benefits to consumers and governments. The draft RIS must be amended to incorporate the policy problems listed above, the findings of this independent review and to identify additional reforms to address long-term public health.

The priority should be aligning the FSANZ Act and review with the Aspirations for the Food Regulatory System.

Priorities should include:
1. Clearly defining public health to include short and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised.
2. Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
3. Resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health.
4. Setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work.
5. Removing inconsistencies in interpretation and enforcement between jurisdictions. This could be done without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law.
6. Reviewing the health claims system as a whole, to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy products.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:
• Include an additional aim the ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/NZ for all Australians/NZers.
• Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.
• Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

ANALYSIS OF RIS OPTIONS AGAINST VISION AND AIMS OF THE DRAFT ASPIRATIONS FOR THE FOOD REGULATORY SYSTEM

ANALYSIS OF THE VISION – A world-class collaborative food regulatory system focused on IMPROVING AND PROTECTING PUBLIC HEALTH and safety.
• Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting Australians from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
• Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
o reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;

o remove safeguards resulting in less focus on improving and protecting safety;
o elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
o fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;
o fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.
• Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:
o centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
o focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

ANALYSIS OF AIM 1: to protect the health and safety of consumers by reducing risks related to food
As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.
• Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect to the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
• Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
• Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

ANALYSIS OF AIM 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.
• Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

ANALYSIS OF AIM 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals “often have system-wide impacts” (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
• Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

ANALYSIS OF AIM 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand
• Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all Australian governments.
• Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will however, result in an even greater economic burden from chronic disease on both consumers themselves and all Australian governments and will have increasingly damaging impacts on health and environmental sustainability.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the immense economic burden of chronic disease on consumers themselves and all Australian governments.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

N/A

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 18:14:06**

About you

What is your name?

Name:
Kate Sievert

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Healthy Food Systems Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:
VIC

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Healthy Food Systems Australia (HFSA) is an advocacy group dedicated to promoting a healthy and sustainable food system for all people and the planet, through holistic and systemic policy action.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: 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, and the provision of adequate information to enable consumers to make informed choices.

The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose.

We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness - and this protection must be maintained. Australians are not, however, effectively protected from long-term health impacts linked to food. Around two thirds of Australian adults and one quarter of Australian children are above a healthy weight, with overweight and obesity, alone, contributing 8.4% to the burden of disease. In fact, dietary risk factors together with obesity and overweight constitute the highest burden of disease, higher than tobacco use. Interestingly, total infectious diseases (which would include food borne illness) does not rank in the top 25 contributors to Burden of Disease - and yet our food regulatory system is so much more geared to foodborne illness than the more prevalent dietary burdens of disease.

Australian adults consume 42% of their energy from ultra-processed foods, which contributes to high intakes of free sugars (with 47.8% of Australians exceeding the WHO recommendation), saturated fats and sodium and low intakes og fibre from wholegrains, fruits and vegetables.

The review of the Act, and the options for reform, must address the skewing of priorities that favour short term potential risk from foodborne illness and put greater emphasis on the dietary contibutors to longer term public health risk.

Additionally, the scope of what is considered a 'risk' in the risk assessment performed by FSANZ in response to applications and proposals to change the code must be reviewed. The current framing of risk is technological in scope, addressing primarily short term toxicological concerns. While this is important, and must be maintained, longer term risks, include influences on dietary patterns, impacts on sustainability, and whether changes are 'fit for purpose' in protecting AND promoting long term public health, should also be considered.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

1. Evidence base

There is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science 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. FSANZ, with agencies such as NHMRC, could coordinate this work to support a robust food regulatory system.

2. Need for a cross-government approach

Food policy involves several government departments and agencies, each with a different perspective on the issue. These agencies 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.

3. Labelling

The current Health Star Rating System does not support informed choice on ultra-processing or environmental sustainability of foods. Any claims on food packaging about sustainability are unregulated and may mislead consumers – unhealthy foods should not be able to carry sustainability claims.

A recent publication in The Lancet Planetary Health suggests environmental sustainability labelling would support a sustainable and healthy food system. Environmental sustainability labelling would need to be evidence-based, fit-for purpose, appropriate for the unique setting of the Australia-New Zealand food system, and be trusted by consumers. The International Organization for Standardization outlines 3 types of environmental sustainability labelling:

Type I environmental labelling – for eco-labelling schemes where there are clearly defined criteria for products

Type II self-declared environmental claims – for products and services where there are neither criteria nor labelling schemes

Type III environmental declarations – for specific aspects of products using a life-cycle approach

4. Communication

Communication about the environmental impacts of foods and the food system is a challenge. Interested stakeholders (ie Department of Health, Department of Agriculture, food industry representatives, public health groups, academics, and consumers) have diverse perspectives on the issue. Information available to consumers must be evidence-based and free from undue commercial conflicts of interest.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect Aboriginal and Torres Strait Islander people more generally. The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3.

The current system prioritises the profits of the food industry and does not effectively protect public health, as it fails to protect Australian consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in our view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

--> The current system largely takes a preventive approach, albeit limited, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian context before adoption. We support the retention of this preventive approach. We do not support any move to a system that is responsive only and intervenes to prevent harm after it has occurred.

--> The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

A key risk to consumers is the continued de-prioritisation of public health and environmental sustainability issues, and the associated health and economic risks. This includes a higher risk of a poor diets, associated with fewer regulatory measures to protect public health and the environment. These health issues are also linked to economic concerns (discussed below). These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. There are also more existential risks associated with the continued exceeding of planetary boundaries by our food system that produces primarily ultra-processed foods that are unnecessary, unhealthy and unsustainable.

In terms of risks to industry, we acknowledge that food processing companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings presented by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. Additionally, we are concerned alleviating these proposed industry costs is being prioritised over the costs of changes to the code for public health.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

Risks to consumers and public health

1. Key risks to consumers and to public health in retaining the status quo are:

--> the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and sustainability. These health issues are also linked to economic risk, as we know that diet-related diseases lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
--> the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of ultra-processed products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.
--> the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

2. Risks to government

A key risk borne by government is the significant cost of the high levels of poor diet and the burden of disease caused by these factors in the community. The cost of diet-related diseases in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity). A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in Australian children and adults, will incur significant economic costs for all Australian governments. These risks must be addressed and quantified in the RIS analysis.

3. Risks to industry

We acknowledge that food processing companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the food processing industry as this is not independent and

verifiable.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health and the environment, in particular the health and economic costs and benefits to long-term public health, diet-related preventable disease, and sustainability outcomes.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:

Costs :
--> The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
--> 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
--> The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

1. Benefits
--> The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
--> The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent 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 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 a few months 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 of 1.18% of cases, 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 RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the 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 business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and Australia's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken

by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of non-communicable diseases in Australia; and include modelling of future costs and consequences should Australia's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health, diet-related preventable disease, and the environment.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:

Costs
--> The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
--> 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
--> The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits
--> The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
--> The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 2, component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures. Some small elements, however, could make a positive contribution and we will discuss each element of this component in turn.

Objects and factors to which FSANZ must have regard;

1. Clarification of definition of public health and sustainability
We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health, as well as the intersecting risks with climate change and environmental sustainability, and include these public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal
We strongly oppose this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act. The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered 'good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the ultra-processed food industry to challenge public health measures and will increase barriers to Australia adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where Australia lags behind in public health protection, when Australia should be a world leader. Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make

informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the ultra-processed food industry when presented with labelling measures to improve public health.

3. Food sustainability
We support the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the food processing industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise
We support the inclusion of indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard
We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

6. Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions:
We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.

Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure:
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1 :
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability, and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. This is because planetary and human health is intrinsically linked, and thus food plays a prominent role in mitigating the risk for both. Sustainability must not be able to be used by the food processing industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

To future-proof the Code, there must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

A greater focus on sustainability will future-proof our agricultural and food sectors in a rapidly changing world. Our food system must change to enable Australia and New Zealand to deliver on our international obligations to reduce carbon emissions and to present as a player in the global market.

Earlier this year, the European Union (EU) resolved to put a carbon price on certain goods imported from outside the EU if these countries are not ambitious enough about climate change. In the Asia-Pacific, CSIRO predicts opportunities driven by growth and consumer preferences for sustainable and natural foods

could be worth $25 billion by 2030 (as long as this is regulated – not due to greenwashing of ultra-processed foods). If the Australia and New Zealand food system makes changes to support environmental sustainability whilst protecting public health (as they are ultimately one and the same), we could command a premium in export markets. Conversely, failure to do so could see a significant drop in desirability of our exports in the global market. Further, in a world with finite resources, we should encourage a shift towards food production and dietary patterns that are both healthy and sustainable.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

We support the inclusion of indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

HFSA does not have sufficient expertise to answer this question.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for Australian governments, through increased health expenditure.

The combination of reforms proposed represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto Australian consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines
This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk analysis framework for applications and proposals:
We note the proposed risk framework in the RIS (Table 5) and make the following comments:
--> Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
--> While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
--> We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes. It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

Additionally, the scope of what is considered a 'risk' in the risk assessment performed by FSANZ in response to applications and proposals to change the code must be reviewed. The current framing of risk is technological in scope, addressing primarily short term toxicological concerns. While this is important, and must be maintained, longer term risks, include influences on dietary patterns, impacts on sustainability, and whether changes are 'fit for purpose' in protecting AND promoting long term public health, should also be considered.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting:
There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process.

Any new decision-making process should also be subject to review after a period of operation.

We consider it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways:
Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks:
We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that Australia should be aiming for. In many cases Australia will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the Australian context.

We note that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will '...undertake minimal assessments of the suitability of the standards within the Australian-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways:
We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making, and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We do not have this data, but we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs above this process should be considered as part of this RIS analysis of administrative burden.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in Australia. Adopting international risk assessments risks lowering the standard of protection in Australia, resulting in Australia falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards:
We support FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment

with public health objectives.

We ask that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. We support efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

Expanding FSANZ's food safety role: coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials:
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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting:
We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts:
We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government:
We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring, and research. Having a centralized database would ensure independence, consistency and sustainability of ongoing monitoring efforts (eg Healthy Food Partnership targets). If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

Yes, if the data supports their objectives and given it would be a credible source. There are some existing data sources (eg Food Switch database, held by the George Institute and FoodTrack held jointly by CSIRO and the Heart Foundation) that universities and private industry pay to access. The FSANZ offering would need to be at a competitive price and of similar or superior quality. If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this.

Changing FSANZ Board arrangements:
We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be

reduced to one member.

We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions:
We support an online portal, however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work:
We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the food processing industry, while placing the burden of risk, both from a health and economic perspective on individual Australian consumers and on Australia's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving 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.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the food processing industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:
-->The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
--> 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
--> The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
--> The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

Costs and benefits of Component 1:
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on

stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have data and analysis to understand the impact of poor diet 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 RIS of the impact of the proposed reforms on public health outcomes.

We know how many Australians have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. We also know the contribution that poor diet makes to the burden of disease in Australia, as well as the significant environmental impacts on GHG emissions, biodiversity, and land use.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of Australians (and New Zealanders) who have a poor diet and 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 RIS 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 (PWC report reference). 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.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account

resource constraints of public health organisations.

We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the States or Territories or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

We do not have data on costs of food incident or recall. We reiterate that consumer safety and public health should be prioritised over commercial interests.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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. However, some elements of this component go much further than this.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards :
We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines:
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.

Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims:
We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine:
We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We are not aware of any data.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

We note that the RIS does not explore that aspect of feasibility and the mechanics of this suggestion, so we are unable to fully respond to this question accurately.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

HFSA does not have data on costs of enforcement in different jurisdictions. We reiterate that consumer safety and public health should be prioritised over cost-saving efforts.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage. We

do not support the extension of FSANZ role from ‘standard setting’ into food policy. As noted in the draft RIS the Food Ministers Meeting is the “body that sets the policy direction for the joint food standards system” (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers’ long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:
--> Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
--> Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
--> Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
--> Set statutory timeframes for proposals
--> Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
--> Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector’s highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

None. We do not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.

Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

HFSA priorities for the FSANZ Act review are:

1) Clearly define the role of food regulation and food policy in protecting public health as it relates to preventable diet-related disease, illness and disability, and sustainability as it relates to environmental degradation (which ultimately impacts on public health too).

2) Repositioning the food regulatory system to meet Australia's current and future health needs associated with the prevention of diet-related disease, illness and disability, and risk for climate-change associated impacts. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional and sustainable qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the Australian Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory consumer labelling for nutrition and sustainability.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

They do not at all. The aspirations are very public health focused and the options presented will not enable the aspirations to be met. None of the options address the current issue of application timeframes and the prioritisation of these over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long-term public health issues in the objectives (all public health asks in the consultation).

We consider that most of the reform options in the RIS are focused excessively on, and give too high priority to, meeting industry objectives, and this will substantially reduce the ability of the Act to achieve the Aspiration document's public health, safety and consumer protection objectives/goals that should be the highest priorities of any new Act.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 18:20:18**

About you

What is your name?

Name:
Eithne Cahill

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Heart Foundation

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

For over 60 years, the Heart Foundation has been the trusted peak body working to improve heart disease prevention, detection, and support for all Australians. Since 1959 we have funded research projects worth over $670+ million. There is much more to be done to prevent millions of Australians from getting heart disease and its related conditions and to improve the lives of those living with and affected by heart disease.

Cardiovascular disease (CVD) is a collective term for diseases that affect the heart and blood vessels. Despite significant advances in recent decades, cardiovascular disease:
• Affects 4 million Australians.
• Accounts for almost 30% of all deaths (one life lost every 12 minutes).
• Is a leading cause of the total burden of disease (12.3% of the total burden).
• Are some of the most costly diseases to treat ($10.4 billion of our annual healthcare budget).
• Disproportionately affects certain population groups.

Risk factors for heart disease include poor diet, physical inactivity, diabetes, tobacco and e-cigarette use, high cholesterol and high blood pressure. The increasing numbers of Australians who are overweight and obese, have poor nutrition and do too little physical activity are on the increase, along with chronic diseases, of which heart disease is the number killer in Australia.

The Heart Foundation’s goal is to make it easier for Australians to lead heart-healthy lives. We aim to create environments that support healthy options and give people information and support to enable them to look after their heart health. Our focus is on a healthy food supply and healthy eating patterns.

The Heart Foundation supports the vision for a world class collaborative food regulatory system focused on improving and protecting public health and safety.

The Heart Foundation has previously contributed to significant government consultations, including, menu labelling, added sugar labelling, and fats and oils labelling. We also collaborate with key stakeholders in public health to advocate on issues, including joint submissions with the Australian Chronic Disease Prevention Alliance (ACDPA) and support the high-level intent of public health stakeholders.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

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, and the provision of adequate information to enable consumers to make informed choices. The RIS must consider this policy problem that applies to both Australia and New Zealand.

We know that, due to the success of the food regulatory system, Australians are generally protected from short term food borne illness and this protection should be maintained. Australians are not, however, effectively protected from long-term health impacts linked to food. Poor diet is the leading contributor to the burden of heart disease [1]

Heart disease is the single leading cause of death in Australia and poor diet (or dietary risk) is responsible for the largest proportion of the burden of heart disease. Dietary risk accounts for 65.5 percent of the total burden of heart disease. [1] Dietary risk is a leading contributor to CVD (2nd) accounting for 41.1 percent of the total burden of CVD and a leading contributor to burden of disease overall (3rd) accounting for 7 percent of total burden of disease. [1]

Current eating patterns are a leading risk factor for ill health in Australia, accounting for over 53% of deaths and being characterized by an excessive intake of discretionary foods that are high in kilojoules, saturated fat, added sugars and salt. [2] About one third of Australian's energy is from discretionary foods. [3]

The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

References
[1] Institute for Health Metrics and Evaluation 2018, Global Burden of Disease Study 2017 (GBD 2017) Results, Global Burden of Disease Collaborative Network, Seattle, Available from http://ghdx.healthdata.org/gbdresults-tool.
[2] Institute for Health Metrics and Evaluation. Global Burden of Disease Study –Data Visualizations: GBD Compare (Australia). 2015. Accessed from: http://vizhub.healthdata.org/gbd-compare/

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

There is currently no agreed definition of 'food sustainability' nor regulation of sustainability related claims on foods in Australia. A commonly used definition is one developed by the United Nations. 'Food sustainability refers to food that is produced that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[1]
The Ridoutt and colleagues [2] review demonstrate the complexity of assessing the environmental impacts of diets. Environmental sustainability labelling would support a sustainable and healthy food system. Environmental sustainability labelling would need to be evidence-based, fit-for purpose, appropriate for the unique setting of the Australia-New Zealand food system and be trusted by consumers. Additional criteria around healthiness of foods should be applied to prevent environmental claims being used to promote unhealthy foods and drinks.

[1] United Nations. (1987). Report of the World Commission on Environment and Development: Our Common Future.
[2] Bradley G Ridoutt, Gilly A Hendrie, Manny Noakes, Dietary Strategies to Reduce Environmental Impact: A Critical Review of the Evidence Base, Advances in Nutrition, Volume 8, Issue 6, November 2017, Pages 933–946, https://doi.org/10.3945/an.117.016691

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. The current system does not effectively protect public health as it fails to protect Australian consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

The Heart Foundation supports clarifying s3 of the Act by including a definition of ‘protecting public health and safety’. We agree the definition used should be the same as 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.”

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 accurate and accessible information relating to food to enable consumers to make informed choices
2. In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following: [MB1] [EW2]
a. the need for standards to be based on risk analysis using the best available scientific evidence
b. the promotion of consistency between domestic and international food standards
c. the information required relating to food to enable consumers to make informed choice
d. the environmental sustainability and minimising the environmental impact of the food supply
e. recognition of indigenous culture and food expertise
f. the need to prevent misleading or deceptive conduct
g. protection of vulnerable groups, including people living in rural and remote regions
h. the promotion of fair trading in food
i. support to protect and improve the healthiness of the food supply
j. support an efficient and internationally competitive food industry.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic

and social impacts).

Please provide your response in the box. :

There is currently no agreed definition of ‘food sustainability’ nor regulation of sustainability related claims on foods in Australia. A commonly used definition is one developed by the United Nations. Food sustainability refers to food that is produced that meets the needs of the present without compromising the ability of future generations to meet their own needs.1
The Ridoutt and colleagues2 review demonstrate the complexity of assessing the environmental impacts of diets. Environmental sustainability labelling would support a sustainable and healthy food system. Environmental sustainability labelling would need to be evidence-based, fit-for purpose, appropriate for the unique setting of the Australia-New Zealand food system and be trusted by consumers. Additional criteria around healthiness of foods should be applied to prevent environmental claims being used to promote unhealthy foods and drinks.
[1] United Nations. (1987). Report of the World Commission on Environment and Development: Our Common Future.
[2] Bradley G Ridoutt, Gilly A Hendrie, Manny Noakes, Dietary Strategies to Reduce Environmental Impact: A Critical Review of the Evidence Base, Advances in Nutrition, Volume 8, Issue 6, November 2017, Pages 933–946, https://doi.org/10.3945/an.117.016691

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

To maintain public confidence in FSANZ’s integrity it is critical that any risk-based framework be evidence based, publicly available and rationale for risk categorisations of all applications and proposals be documented and transparent.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The current FSANZ Board of 12 members includes only 3 health experts, only 1 of which has expertise in nutrition. We are concerned that a smaller Board will result in less of a skills mix, particularly nutrition, public health and consumer representation.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.

The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices.

The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations on the Act review. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Priorities for the FSANZ Act review should include the following:

- Commission an independent review of the health costs and consequences associated
with food regulation, food policy and the FSANZ Act.
- Clearly define the role of food regulation and food policy in protecting public health.
- Repositioning of the food regulatory system to meet the current and future health needs of Australia associated with cardiovascular disease, obesity and other preventable diet-related disease, illness and disability to align with the Aspirations for the Food Regulatory System document.

The FSANZ Act must also align with the Aspirations for the Food Regulatory System.

Key reforms must include:
• Clearly defining public health to encompass both short and long-term health, including the prevention of diet-related disease.
• Developing a pathway for public health and consumer representatives to ask for review and amendment of the Food Standards Code.
• Resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease.
• Setting statutory maximum timeframes for public health proposals that are aligned with timeframes for industry applications, to ensure public health measures receive equal priority to industry applications.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No, they do not at all.

Any reforms to the system should prioritise public health, including short and long-term health. The Overarching Strategic Statement (OSS) objectives clearly highlight the health and safety of consumers, promoting and enabling healthy food choices and providing sufficient information for consumers to make informed choices.

None of the proposed options address some of the significant issues with the current regulatory system such as application timeframes, prioritisation of applications over proposals as a result, nor does it provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long-term public health issues.

There is an enormous need to address the long-term risks of unhealthy foods and for the food system to play a greater role in promoting and enabling healthy food choices. We support government regulatory approaches to improve availability and access to healthier foods and to provide consumers with clear information about the healthiness (or not) of packaged foods. Proposals to improve the food system should be based on evidence and free from political interference or lobbying.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

In Summary: The Heart Foundation believes that the reform options put forward in the draft Regulatory Impact Statement (RIS) for the review of the FSANZ Act do not support it to meet its primary goal of protecting public health and will not result in an Act that is ‘fit for purpose’.

Dietary risks are responsible for the largest proportion of the burden of heart disease (49%), followed by high blood pressure (46%) and high LDL cholesterol (38%)1 and poor diet is by far the most significant public health issue linked to our food system today; any reform process that does not consider this as a central, critical policy issue cannot lead to a system that will meet the FSANZ Act’s primary purpose of protecting public health.

The proposed reforms will reduce independent oversight, increase barriers to implementing public health measures, compromise the independence of FSANZ, and further prioritise the profits of the food industry at the expense of public health.

The review, the first major review of the Act in almost 30 years, presents a unique opportunity to ensure public health is front and centre of our food regulatory system. The draft RIS must be revised to ensure that the FSANZ Act enables a world-leading food regulatory system that can address preventable diet-related disease, effectively protect public health and promote a healthy and resilient population to support economic growth.

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 19:01:04**

About you

What is your name?

Name:
Reith Parker

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Food industry

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Red Meat Advisory Council

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Red Meat Advisory Council (RMAC) is a federation of Australian red meat and livestock national employer associations and commodity representative organisations. RMAC members are the prescribed Peak Industry Councils under the Australian Meat and Livestock Industry Act 1997, including the:
Australian Livestock Exporters' Association,
Australian Lot Feeders' Association,
Australian Meat Industry Council,
Cattle Council of Australia,
Sheep Producers Australia, and
Goat Industry Council of Australia.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The impact upon category brand integrity from labelling amendments made under the Food Code. The Australian red meat and livestock industry category brands are being significantly impaired due to Food Code Amendment No. 154 which was made in relation to analogue dairy products without consideration of the flow on effect such wording would have on analogue meat products.

It is clear from the background of Standard 1.1.1–13(4) that the intended purpose was to cover foods such as soy milk and coconut cream, which had a long history of consumers understanding that the products were not in fact dairy products. The red meat and livestock industry was not engaged appropriately regarding this amendment and it is now being used by manufactured plant-based proteins to misappropriate our industry's category brand which is biochemically different.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

Consideration of food sustainability is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

Recognition of Indigenous culture and food expertise is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Option 1 is poses the least risk for the Australian red meat and livestock industry. FSANZ recent partnership with extreme anti-meat and anti-farmer activists for the proposed webinar "Future Foods" has already reduced our industry's confidence in the objectivity of the agency.

Proposals contained in Option 2 and 3 to increase the remit of the agency to "expand the objectives of FSANZ to address important priorities of food sustainability" and "expand the objectives of FSANZ to include recognition of indigenous culture and expertise" are not supported by the Australian red meat and livestock industry. The consumer confidence developed over thirty years since the FSANZ Act was established is too valuable to be risked through an expanded remit of FSANZ which supports even more partnerships with extreme anti-meat and anti-farmer activist organisations.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The regulatory system was originally set up to assure food safety and the Australian red meat and livestock industry firmly believes this should continue to be FSANZ's remit. For example, ensuring that food was manufactured in hygienic spaces and used safe ingredients was important for preventing injury or illness. These are measurable, quantifiable, science-based, risk-based objectives that are directly controllable by the regulated entity, rather than a subjective policy target of 'long-term health and nutrition'.

The Australian red meat and livestock industry favors a narrower definition focused on food safety primarily in the acute post-consumption period, meaning that the food should only be regulated by FSANZ to prevent injury or illness; longer-term public health and nutrition objectives should only be pursued through other channels including consumer education programs etc.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

RMAC has no further advice at this stage.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The reputation for our safe and quality product has been supported by the standards of public health set under the Australian Food Standards Australia New Zealand Act 1991 (the FSANZ Act). With more than $11 billion of red meat annually retailed for domestic consumption, a high degree of confidence in Australia's food standards is critical for the ongoing viability of red meat and livestock businesses.

The cost and risk to Australia's $11 billion of annual red meat sales needs to be considered before any proposed expanded remit of FSANZ.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Latest figures for Australia's red meat and livestock industry value are available here - https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/soti-report/mla-state-of-industry-report-2020.pdf

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

Minimal risk under Option 1 in comparison to Option 2 and Option 3. While the status quo allowed Standard 1.1.1–13(4) to be introduced and utilised for meat category branding – even though the intended purpose was only to cover analogue dairy products – it still poses less risk than an expanded FSANZ remit which will provide a greater platform for the agency's partnership with extreme anti-meat and anti-farmer activist groups.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 2's proposed component 1 to increase the remit of the agency to "expand the objectives of FSANZ to address important priorities of food sustainability" and "expand the objectives of FSANZ to include recognition of indigenous culture and expertise" are not supported by the Australian red meat and livestock industry. The consumer confidence developed over thirty years since the FSANZ Act was established is too valuable to be risked through an expanded remit of FSANZ which supports even more partnerships with extreme anti-meat and anti-farmer activist organisations.

FSANZ should be focused on the regulatory system that was originally set up to assure food safety and. For example, ensuring that food was manufactured in hygienic spaces and used safe ingredients was important for preventing injury or illness. These are measurable, quantifiable, science-based, risk-based objectives that are directly controllable by the regulated entity, rather than subjective policy targets.

The Australian red meat and livestock industry favors a narrower definition focused on food safety primarily in the acute post-consumption period, meaning that the food should only be regulated by FSANZ to prevent injury or illness; longer-term public health and nutrition objectives should be pursued through other channels such as consumer education programs.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

Consideration of food sustainability is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Consideration of food sustainability is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Recognition of Indigenous culture and food expertise is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

Recognition of Indigenous culture and food expertise is not within the remit of FSANZ or the terms of reference of the review into the Food Standards Australia New Zealand Act 1991.

FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

The Australian red meat and livestock industry supports measurable, quantifiable, science-based, risk-based objectives that are directly controllable by the regulated entity, rather than subjective policy targets. Facilitating risk-based approaches as proposed in Component 2 to developing or amending food regulatory measures would be beneficial to our industry if focused on food safety primarily in the acute post-consumption period, meaning that the food should be regulated by FSANZ to prevent injury or illness; longer-term public health and nutrition, sustainability or cultural objectives should only be pursued through other channels including consumer education programs.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

The Australian red meat and livestock industry is generally supportive of moving detail into lower form regulations which are easier to change without requiring parliamentary consensus. This is in keeping with modern legislative drafting principles (e.g. Export Control Act and Rules, where the delegate to sign off on Rules is the Department of Agriculture's Secretary, rather than the Minister, but still subject to parliamentary disallowance procedures).

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.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

The Australian red meat and livestock industry does not support further dilution of Food Code labelling standards by relegating standards to codes of practices or guidelines. Industry is supportive of exploring opportunities for decreasing regulatory compliance costs using risk-based frameworks but this can only be considered if the agency's objectivity can be assured.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

RMAC has no further advice at this stage.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

The Australian red meat and livestock industry does not support the concept of FSANZ adopting risk assessments from overseas jurisdictions to enable fast-tracking of applications, without sufficient consideration of the Australian context, specific to an Australian dietary consumption pattern. Further, there is an element of trade risk associated with blanket adoption of risk assessments from overseas jurisdictions, as these may not be acceptable to a third country/trading partner.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Regulatory sandboxes pose an unnecessary risk to the consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand. Regulations should be applied to the same standard across all food products, ingredients and technologies.

Adverse outcomes from regulatory sandboxes may significantly damage consumer confidence in the transparent and accountable regulatory framework within which the food industry works. This proposal is an unnecessary risk and is not supported by the Australian red meat and livestock industry.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

No novel food products and ingredients and new technologies used in the production and testing of food products should be introduced using regulatory sandboxes.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Australian red meat and livestock industry believe FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions under its existing resourcing envelope, before trying to broaden its remit and risk diluting the agency's impact, reputation and effectiveness.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

The Australian red meat and livestock industry believe FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions under its existing resourcing envelope, before trying to broaden its remit and risk diluting the agency's impact, reputation and effectiveness.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Fostering new approaches to working with other agencies, with a focus on intelligence sharing may support improved regulatory outcomes for the agency. However, FSANZ should only consider legitimate agencies to collaborate with. FSANZ's recent partnership with extreme anti-meat and anti-farmer activist groups should not be supported under the proposed component 5.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

RMAC has no further advice at this stage.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

As part of component 6, the review should consider transitioning agency oversight and responsibility to the Department of Agriculture Water Resources and the Environment.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Any changes to governance and operations need to ensure no undue influence can be exerted by anti-meat and anti-livestock activist groups.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The reputation for our safe and quality product has been supported by the standards of public health set under the Australian Food Standards Australia New Zealand Act 1991 (the FSANZ Act). With more than $11 billion of red meat annually retailed for domestic consumption, a high degree of confidence in Australia's food standards is critical for the ongoing viability of red meat and livestock businesses.

The cost and risk to Australia's $11 billion of annual red meat sales needs to be considered before any proposed expanded remit of FSANZ.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Latest figures for Australia's red meat and livestock industry value are available here - https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/soti-report/mla-state-of-industry-report-2020.pdf

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The Australian meat and livestock industry is strongly opposed to FSANZ seeking to recover costs – the costs of maintaining a standard setting body for food safety is a legitimate cost of government, and it is inappropriate to seek that these costs are passed onto industry. The Australian Government Cost Recovery Guidelines are clear in relation to where cost recovery should or should not be applied. Clearly, the primary purpose of FSANZ's food safety standard is to ensure the protection of the consumer, and as such, is performing a public service role with the entire Australian and NZ community as the beneficiaries.

The Australian meat and livestock industry notes that the scoping paper refers to TGA and APVMA application assessments which are cost-recoverable activities – industry considers that the TGA/APVMA applications have a much more direct beneficiary in the manufacturer/chemical company that would profit from the sale of registered products. This is not the case for basic food safety standards governed by FSANZ.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

Increased regulatory and compliance costs.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

Industry is not well engaged by the food regulation system. Using Standard 1.1.1–13(4) as an example, the red meat and livestock industry was not engaged appropriately regarding this amendment and it is now being used by manufactured plant-based proteins to misappropriate our industry's category brand which is biochemically different.

Furthermore, industry was not invited to participate in this public consultation process on this draft regulatory impact statement.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

While the Australian meat and livestock industry support a more national approach to coordinate food incidents industry does not consider that the scoping paper adequately provides sufficient detail as to how duplication/overlap can be avoided – industry does not want there to be greater compliance burden/cost through another layer of statutory functions.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

RMAC has no further advice at this stage.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

RMAC is not in a position to comment on value to New Zealand.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The Australian red meat and livestock industry believe FSANZ should focus on ensuring that it can suitably deliver on its core legislated functions under its existing resourcing envelope, before trying to broaden its remit as proposed by component two and risk diluting the agency's impact, reputation and effectiveness.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

RMAC has no further advice at this stage.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

RMAC is not in a position to comment on value to New Zealand.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

While the Australian red meat and livestock industry supports a more national approach to the consistent enforcement of food standards, this is a constitutional matter, and industry does not consider that the draft RIS adequately provides sufficient detail as to how the introduction of enforcement powers would be acceptable to states and territories, and how duplication/overlap can be avoided – industry does not want there to be greater compliance burden/cost through another layer of regulatory enforcement. Further, industry does not support additional fees and charges being directed to Australian meat and livestock businesses through cost-recovery.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

RMAC is not in a position to provide this detail.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Given that 70% of Australian red meat is exported to over 100 markets internationally, and compliance with the Code is a critical pillar to ensure food safety and a fundamental requirement to export (referenced in Australian export regulations). Ongoing access to export markets is also critical to the sustainability and security of domestic food supplies, given the Australian market's consumption patterns (e.g. high consumer of rump steak but low consumer of offal).

The Australian red meat and livestock industry supports proposed changes in the FSANZ objectives for setting of food standards to include trade considerations

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

RMAC has no further advice at this stage.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

Nill. The Australian red meat and livestock industry is not supportive for FSANZ adopting any cost recovery mechanisms.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

The draft RIS went beyond the terms of reference set for the review process. Above all else, FSANZ must focus on focus on ensuring that it can suitably deliver on its core legislated functions for food safety and not broaden its remit which will risk diluting the agency's impact, reputation and effectiveness.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

The Australian meat and livestock industry considers the top 3 issues for resolutions through the review process are:
1. Increased clarity in the interpretation of standards, whether they be in relation to consumer clarity (e.g. manufactured plant based proteins incorrectly labelled as 'meat'), or ATO Tax Ruling – type binding interpretations to enable jurisdictional consistency in food standards enforcement;
2. Ensure that supporting trade is included in the legislative obligation of food standards setting ; and
3. Ensure that the policy remit of FSANZ is not expanded to promotion of longer term health which is the remit of departments of health, and ensure that FSANZ maintains its remit for more acute food safety standards.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

Many reform options proposed in the draft Regulatory Impact Statement were well outside the terms of reference set to review into the Food Standards Australia New Zealand Act 1991. Any future drafts or final version of the Regulatory Impact Statement should be considered solely through the context of the agreed upon terms of reference for the review.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 19:46:29**

About you

What is your name?

Name:
Elizabeth World

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Dietitians Australia

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Dietitians Australia is the national association of the dietetic profession with over 7500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for food and nutrition for healthier people and healthier communities. Dietitians Australia appreciates the opportunity to provide feedback to FSANZ regarding the draft regulation impact statement on the review of the Food Standards Australia New Zealand Act 1991 (Cth).

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians have an important role in the food system to support consumers in making healthy food choices and companies with product formulation, marketing, consumer education and compliance.

This submission was prepared by members of the Dietitians Australia Food Regulatory & Policy Committee, with input from the Food & Environment Interest Group, following the Conflict of Interest Management Policy and process approved by the Board of Dietitians Australia. Contributors include Dietitians Australia members with wide ranging expertise in areas including public health, food systems, food industry and academia.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

FSANZ has achieved the objective of the Food Standards Australia New Zealand Act 1991 (Cth) (the Act) to protect consumers from short term food borne

illness. Now is a prime opportunity to review the objectives to ensure the purpose of the Act fits with the changing health and food environments in Australia and New Zealand.
The three key Policy Problems identified in the RIS are:
1. The Act does not support efficient and effective regulation and is burdensome to administer in its current form.
2. Legislation does not enable a strong, resilient, and agile joint food standards system.
3. Current arrangements undermine the power of a single, joint food standards system.

Missing from the RIS is a policy problem widely recognised amongst consumer and health stakeholders: the Act does not allow the food regulatory system to meet its objective of protecting public health, specifically chronic and diet-related disease. Chronic disease is a significant health problem in Australia, affecting half the adult population.(1) One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.(2)

By failing to consider this policy problem of chronic diet-related disease and public health, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices. The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not achieve its primary purpose of protecting public health.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

EVIDENCE BASE
There is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science 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. Government bodies including FSANZ, NHMRC, CSIRO and the Department of Agriculture could collaborate on this work to support a robust and sustainable food regulatory system.

NEED FOR ACROSS-GOVERNMENT APPROACH
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.

LABELLING
Informed choice on the healthiness of foods is supported by the Health Star Rating, but there is no labelling system in Australia to support informed choice on environmental sustainability of foods. Any claims on food packaging about sustainability are unregulated and may mislead consumers.

A recent publication in The Lancet Planetary Health(3) suggests environmental sustainability labelling would support a sustainable and healthy food system. Environmental sustainability labelling would need to be evidence-based, fit-for purpose, appropriate for the unique setting of the Australia-New Zealand food system, and be trusted by consumers.(4) We recommend type 1 or type 3 labelling as outlined by the International Organization for Standardization(5) be explored. Additional criteria around healthiness of foods should be applied to prevent environmental claims being used to promote unhealthy foods.

MEASUREMENT
Measurement of environmental impact and sustainability is an area of research attention. Australia is producing great amount of evidence in this area, out of CSIRO. Ridoutt and colleagues'(6) 2017 review demonstrates the complexity of assessing the environmental impacts of diets.

COMMUNICATION
Communication about the environmental impacts of foods and the food system is a challenge. Interested stakeholders (ie Department of Health, food industry, public health groups, consumers) have diverse perspectives on the issue. Information available to consumers must be evidence-based and free from undue commercial conflicts of interest.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

There is currently no requirement in the assessment of novel foods to have regard to whether the novel foods being brought to market are traditional foods of Aboriginal, Torres Strait Islander or M■ori peoples. Food expertise of Aboriginal, Torres Strait Islander and M■ori peoples should be recognised, particularly the safe consumption and sustainable production of these foods. Further, it should be considered whether commercialisation of traditional foods should be limited to companies owned by Aboriginal, Torres Strait Islander and M■ori persons, or approved only with active consultation with Aboriginal, Torres Strait Islander and M■ori peoples.

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 M■ori peoples, not only limited to the introduction of new food products.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Dietitians Australia does not support Option 1: retain status quo. The status quo does not adequately protect the long-term health of consumers. However, Options 2 and 3 as packaged involve 'less regulatory intervention and associated regulatory burden' (RIS p49). This will come at a cost to public health and consumer interests. We suggest an alternative option in response to questions 47-49.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Consumers (and therefore governments) will be vulnerable to several risks if the status quo is retained. Risks and consequences include:
• Existing market incentives for manufacturers to introduce new unhealthy products
• Limited or misleading information on food packaging that constrains consumer capacity to make informed choices
• Continued upward trend in unhealthy weight for adults and children
• Increasing prevalence of diet-related disease including heart disease and diabetes(7)
• Ongoing quality of life and economic costs of sugar-related dental decay – $10.5 billion was spent on dental services in 2017-18(8)
• Continued failure to meet objective 2 of the food regulatory system 'supporting the public health objectives to reduce chronic disease related to overweight and obesity'(9)
• Estimated spend of $8.3 to $21 billion per year due to direct and indirect costs of obesity(7, 10-12)
• Failing to meet the targets of the National Preventive Health Strategy(13) and National Obesity Strategy(14)

Processed food companies may incur some costs under the current system due to the requirements of and delays in the application process. However, we do not accept the quantification of these costs in the RIS. We are concerned that in multiple instances (eg p71) the RIS, without analysis, uses costings presented by one industry stakeholder and extrapolates these across industry to attribute a large cost to the failing of the current food regulation system.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have data about the cost of delaying bringing products to market. We are concerned that in multiple instances (eg p71) the RIS, without analysis, uses costings presented by one industry stakeholder and extrapolates these across industry to attribute a large cost to the failing of the current food regulation system. This is likely to inflate estimations of the cost to industry.
We discuss the costs of delaying proposals for public health measures in question 7. We reiterate that consumer safety and public health should be prioritised over commercial interests.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

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The draft RIS does not include costs and benefits related to public health, borne by consumers and governments. The RIS must be revised to consider the following costs and benefits.

COSTS
• Poor health attributable to delays in progressing food regulatory measures. For example, there was a significant delay in developing and implementing warning labels for pregnant people on alcohol, despite the health cost of Foetal Alcohol Spectrum Disorder (FASD) of $27.6 billion over 20 years.(15)

• Poor health attributable to dietary patterns. One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.(2)
• Social costs of poor health. For example, adults with multiple chronic conditions are less likely to be working than adults with no chronic conditions (67% compared with 83%) and more likely to have a restriction or limitation in everyday activities (50% compared with 7.9%).(16)
• Economic costs of poor health and diet-related disease. Obesity alone is estimated to cost Australia $8.3 to $21 billion per year.(7, 10-12)
• Administrative costs to consumer and public health stakeholders of participating in lengthy review processes.

BENEFITS
• Expenditure savings. For example, $502 million net saving attributable to kilojoule labelling on fast food menus or $250.6 million net saving attributable to reformulation of sugar-sweetened beverages to reduce sugar content.(17)
• Improved consumer health due to assured safety of foods on market.
• Improved consumer health due to healthiness of food supply.
• Improved consumer health due to information to support informed choices.
• Improved consumer health literacy.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

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Quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system. This same analysis can be used to quantify the benefits of these policies once implemented.

Example: The Ministerial Forum on Food Regulation directed FSANZ to develop a mandatory standard for warning labels for pregnant people on alcohol in October 2018. This work was not completed until 2 years later when the Forum accepted a draft standard in July 2020. The RIS for this proposal estimated the economic cost of Foetal Alcohol Spectrum Disorder (FASD) to be $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. The RIS stated that prevention of just 1.18% (n=183) of FASD cases would offset the costs of the mandatory labelling scheme. Using these conservative figures, each year of delay cost $13.8 million and a preventable 183 cases of FASD.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Consumers will be vulnerable to several risks if the status quo is retained. Risks and consequences include:
• Existing market incentives for manufacturers to introduce new unhealthy products
• Limited or misleading information on food packaging that constrains consumer capacity to make informed choices
• Continued upward trend in unhealthy weight for adults and children
• Increasing prevalence of diet-related disease including heart disease and diabetes(7)
• Ongoing costs of sugar-related dental decay – $10.5 billion was spent by consumers and the government on dental services in 2017-18(8)
• Continued failure to meet objective 2 of the food regulatory system 'supporting the public health objectives to reduce chronic disease related to overweight and obesity'(9)
• Estimated spend of $8.3 to $21 billion per year due to direct and indirect costs of obesity(7, 10-12)
• Failing to meet the targets of the National Preventive Health Strategy(13) and National Obesity Strategy(14)

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

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Not applicable.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

CLARIFYING DEFINITION OF 'PROTECTING PUBLIC HEALTH AND SAFETY'
Dietitians Australia supports clarifying s3 of the Act by including a definition of 'protecting public health and safety'. We agree the definition used should be the same as 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.'

CHANGES TO OBJECTIVES
We support aligning wording around public health across s3 and s18 to 'a high standard of safety and public health protection'.

We do not support expansion of FSANZ objective to recognise trade as a core goal. The protection of public health and safety must continue to be the primary objective of FSANZ. In recognition of the occasional conflicts between public health and trade, it is important that FSANZ has a clearly articulated mandate to promote health over trade.

We support establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure. This will ensure the interests of public safety and health are prioritised over any undue political influence.

We support expanding the objectives of FSANZ to address important priorities of food sustainability. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

We support expanding the objectives of FSANZ to include recognition of indigenous culture and expertise. 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 M■ori peoples, not only limited to the introduction of new food products. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and M■ori peoples on how this can best be achieved.

We recommend prioritisation under s18 reads as follows to enable decision-making where public health and safety and commerce conflict:
"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 accurate and accessible information relating to food to enable consumers to make informed choices
2. In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:
c. the need for standards to be based on risk analysis using the best available scientific evidence
d. the promotion of consistency between domestic and international food standards
e. the information required relating to food to enable consumers to make informed choice
f. the environmental sustainability and minimising the environmental impact of the food supply
g. recognition of indigenous culture and food expertise
h. the need to prevent misleading or deceptive conduct
i. equitable opportunity for good health across population subgroups
j. the promotion of fair trading in food
k. support to protect and improve the healthiness of the food supply
l. support an efficient and internationally competitive food industry."

FSANZ STATUTORY FUNCTIONS
We support changes to FSANZ statutory functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support FSANZ having statutory functions related to food fraud or food crime. These are more appropriate to be handled by the ACCC and other enforcement agencies. FSANZ may support activities related to food fraud and food crime, but these should not be a key focus of FSANZ.

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia prefers use of a broad definition of sustainability including environmental, health and social impacts. Economic impacts should only be considered insofar as they result from environmental, health and social impacts.

The 1987 Our Common Future report by the World Commission on Environment and Development (alternatively, the Brundtland Commission) defined sustainability as ‘development which meets the needs of current generations without compromising the ability of future generations to meet their own needs.’(18) The report identifies four dimensions of sustainability: society, environment, culture and economy. Further reference for a definition of sustainability should be taken from the 2030 Agenda for Sustainable Development,(19) adopted by United Nations member states including Australia and New Zealand.

Regulatory measures should be put in place to prevent environmental claims being used to promote unhealthy foods. There must also be a clear framework to independently assess sustainability claims to limit ‘greenwashing’. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

A greater focus on sustainability will future-proof our agricultural and food sectors in a rapidly changing world. Our food system must change to enable Australia and New Zealand to deliver on our international obligations to reduce carbon emissions and to present as a player in the global market.

Earlier this year, the European Union (EU) resolved to put a carbon price on certain goods imported from outside the EU if these countries are not ambitious enough about climate change.(20) In the Asia-Pacific, CSIRO predicts opportunities driven by growth and consumer preferences for sustainable and natural foods could be worth $25 billion by 2030.(21) If the Australia and New Zealand food system makes changes to support environmental sustainability, we could command a premium in export markets. Conversely, failure to do so could see a significant drop in desirability of our exports in the global market.

Further, in a world with finite resources, we should encourage a shift towards food production and dietary patterns that are both healthy and sustainable.(22)

14 How can FSANZ’s activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and M■ori peoples.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and M■ori peoples.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia supports the concept of facilitating risk-based approaches to developing or amending food regulatory measures. To maintain public confidence in FSANZ’s integrity it is critical that the risk-based framework be publicly available and reasons for risk categorisations of all applications and proposals be documented and transparent.

CODES OF PRACTICE AND GUIDELINES
We do not support use of guidelines or codes of practice in place of regulation. Guidelines and codes of practice are non-binding. In the interest of consumer safety and public health, the food regulatory system must be based on regulation, not voluntary, non-binding guidelines or codes of practice.

Guidelines should be used only to explain how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

RISK FRAMEWORK
We support the concept of adopting a risk-based model. The framework outlined on page 54 of the RIS needs further development, including:
• Extent of risk must explicitly include risks to long-term health, such as diet-related preventable disease.
• Scope of impact must consider not only immediate impacts, but long-term health impacts.
• Existing evidence cannot include industry self-substantiation.

Any application that has an impact on short-term public health and safety or long-term health should not be considered low risk.
The risk framework should be developed outside the legislative reform process. All governments that form part of the food regulatory system must be involved. Wider stakeholder consultation and regular review should occur to prevent negative outcomes.

DELEGATION
We support allowing the FSANZ Board to delegate some low-risk decisions to the FSANZ CEO. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low risk. Internal business processes would need to ensure that the Board retains oversight over emerging risks or trends through appropriate reporting arrangements.

We support allowing the Food Ministers Meeting to delegate some low-risk decisions to department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low risk.

ASSESSMENTS FROM OVERSEAS JURISDICTIONS
We conditionally support the ability for FSANZ to accept risk assessments from overseas jurisdictions using the minimal check pathway. To some extent, FSANZ already adopts this approach for the use of permitted flavourings. Standard 1.1.2 permits flavours if they are listed in specific publications. Greater harmonisation for low-risk change is appropriate. We do not support automatic adoption of new standards from select international regulatory systems. An expedited process for importing regulation from jurisdictions with equivalent or stronger regulatory processes (eg Canada) may be appropriate. It is important that the system be transparent, credible and risk based. Therefore, if harmonisation is increased it is essential that the scientific and policy bases for FSANZ's decision are publicly available. For certainty for consumers and businesses, the sources of international food safety decisions must be clearly identified and limited to credible and scientifically rigorous agencies such as the EFSA.

INDUSTRY SELF-SUBSTANTIATION PATHWAY
We are strongly opposed to introduction of an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

No. Dietitians Australia does not support the Forum delegating decision-making to FSANZ for low-risk technical amendments, such as processing aids applications. The Food Minsters Meeting delegating decisions to the FSANZ Board removes power from jurisdictions and risks the FSANZ CEO having too much power. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Codes of practice or guidelines should not be used to replace food standards. Guidelines should only be used to explain how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia cannot quantify the administrative burden on industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have any data to demonstrate savings to industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

The example given on page 61 of the RIS that Standard 1.2.7 Nutrition, health and related claims have an adverse impact on innovation implies that industry profit is more important than consumer protection. If regulatory sandboxes are put in place and products are released with claims that do not meet Standard 1.2.7, consumers will be exposed to misleading messaging. We do not accept the notion that standards around claims on packaging are a barrier to innovation. Those standards do not stop or delay introduction of products to market.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

RESOURCING FSANZ
Dietitians Australia supports resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.
We ask that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource

constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. We support efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

FSANZ AS COORDINATOR OF FOOD SAFETY RESEARCH AND DATABASES
We conditionally support equipping FSANZ to coordinate food safety research across Australia and develop strategic relationships with New Zealand food safety research entities; and positioning FSANZ as the guardian of key food safety databases. FSANZ must have the resourcing to deliver on this as well as core functions. This would provide an opportunity for FSANZ to establish a focused research agenda and ensure efficient allocation and use of resources to support research priorities. Coordinating stronger research linkages across industry, universities, government agencies and private organisations will also facilitate knowledge sharing and maximise the value of research findings.

FSANZ AND CONSUMER-FACING MATERIALS
We do not support providing for FSANZ to collate and create consumer-facing food safety education materials. Consumer-facing materials should come from a body who holds a high level of consumer recognition and trust relating to food and health. Federal and state/territory health departments have greater consumer communication expertise, name recognition and trust to enable effective consumer education in food safety. Partnerships between FSANZ, health departments, Dietitians Australia and the Food Safety Information Council would support unification to food safety across Australia, create efficiencies and eliminate challenges associated with the need to achieve state and territory cooperation.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

No. It is our understanding FSANZ may fulfil this role without it being legislated.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

JOINT AGENDA SETTING
Dietitians Australia conditionally supports FSANZ and the Food Ministers' Meeting undertaking periodic joint agenda-setting to agree on the proposals on which to focus. FSANZ should not be used as a tool to advance political agendas beyond the interests of consumer safety and public health. Public health issues, in particular long-term health and preventable diet-related disease, should consistently be prioritised. Further clarification is needed about how priorities would be set and which party has ultimate decision-making powers.

PARTNERING AND REDUCTION OF DUPLICATION
We support FSANZ partnering with the government to make intelligence-led decisions and reduce duplication of efforts. FSANZ must be given the resources to effectively engage with stakeholders.

We support earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.

We support collaborating with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response.

We support international partnerships with overseas jurisdictions. However, this should not result in automatic adoption of overseas assessments or regulations. We discuss this further in our response to question 16.

DATABANK
We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring, and research. Having a centralized database would ensure independence, consistency and sustainability of ongoing monitoring efforts (eg Healthy Food Partnership targets). If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

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Yes, if the data supports their objectives and given it would be a credible source. There are some existing data sources (eg Food Switch database, held by the George Institute and FoodTrack held jointly by CSIRO and the Heart Foundation) that universities and private industry pay to access. The FSANZ offering would need to be at a competitive price and of similar or superior quality. If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

FSANZ BOARD
Dietitians Australia has reservations about a smaller, more explicitly skills-based Board. The current FSANZ Board of 12 members includes only 3 health experts, only 1 of which has expertise in human nutrition. We are concerned that a smaller Board will result in less of a skills mix, particularly nutrition, public health and consumer representation.

The concept of removing the statutory requirement for the Minister to seek nominations from prescribed organisations seems appropriate with the goal of reducing commercial conflicts of interest and industry over-representation. However, this may also reduce public health and consumer representation. If the statutory requirement is removed, there must be clear and transparent criteria for Board member skills mix. Conflicts of interests must also be strictly managed, consistent with the principles of the draft National Preventive Health Strategy.

We support virtual Board meetings as a responsiveness and cost-saving measure.

INVESTMENT INTO BUSINESS SOLUTIONS
Dietitians Australia supports investment to support staff efficiency. We recommend that FSANZ staff are actively consulted on this.

COST-RECOVERY MECHANISMS
Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry-initiated work. Equity considerations around fast-tracking industry-initiated and -funded work above the interests of public health should be carefully considered.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

OVERALL
Option 2 represents a further prioritisation of commercial profits ahead of public health. Many components of proposed reform will create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform. Option 2 will not meet the primary objective of a modernised food regulatory system to protect public health and will not result in a fit-for-purpose food regulatory system.

COMPONENT 1
Prioritisation of trade presents a risk to consumer safety and public health.
Expanding FSANZ's statutory functions to include food fraud and food crime risks redirection of resources away from the key focus of setting standards to protect consumer safety and public health.

COMPONENT 2
Use of guidelines or codes of practice in place of food standards weakens the food regulatory system and presents a risk to consumers.

The risk framework must not include industry self-substantiation. This would undermine the robustness of the system and leave it vulnerable to manipulation.
The Food Minsters Meeting delegating decisions to the FSANZ Board removes power from jurisdictions and risks the FSANZ CEO having too much power. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

Automatic adoption of assessments from overseas jurisdictions presents the risk of undermining the rigour of the trans-Tasman system. This may result in decreased consumer safety, poorer long-term health and decreased consumer trust in the food regulatory system.

An industry self-substantiation pathway represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts

public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

COMPONENT 3
Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

COMPONENT 4
FSANZ becoming a coordinator of food safety research and databases presents the risk of resources being stretched, and redirected from the core function of setting standards to protect consumers. FSANZ must be adequately resourced for any additional responsibilities it is to take on.

FSANZ taking on creation of consumer-facing food safety materials presents the risk of consumers not heeding the advice, or knowing how to access it, due to lack of familiarity with FSANZ. This function is better kept to health departments, Dietitians Australia and the Food Safety Information Council.

COMPONENT 5
Any fee-for-service mechanism should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

We caution against international collaboration being used as a justification for automatic adoption of overseas assessments or regulations.

COMPONENT 6
A smaller FSANZ Board without quotas for public and consumer representatives presents a risk of inadequate skills mix on the Board, and insufficient representation of consumer interests.

Cost recovery mechanisms for industry-initiated work may raise intellectual property issues. Equity considerations around fast-tracking industry-initiated and -funded work above the interests of public health should be carefully considered.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

The draft RIS does not include costs and benefits related to public health, borne by consumers and governments. The RIS must be revised to consider the following costs and benefits.

COSTS
• Food-borne illness and poor long-term health attributable to less oversight and less pre-market assessment.
• Poor health attributable to delays in progressing proposals related to public health. For example, there was a significant delay in developing and implementing warning labels for pregnant people on alcohol, despite the health cost of Foetal Alcohol Spectrum Disorder (FASD) of $27.6 billion over 20 years.(15)
• Poor health attributable to dietary patterns, influenced by food supply dominated by unhealthy processed foods. One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.(2)
• Social costs of poor health. For example, adults with multiple chronic conditions are less likely to be working than adults with no chronic conditions (67% compared with 83%) and more likely to have a restriction or limitation in everyday activities (50% compared with 7.9%).(16)
• Economic costs of poor health and diet-related disease. Obesity alone is estimated to cost Australia $8.3 to $21 billion per year.(7, 10-12)
• Administrative costs to consumer and public health stakeholders of participating in lengthy review processes.

BENEFITS
• Expenditure savings. For example, $502 million net saving attributable to kilojoule labelling on fast food menus or $250.6 million net saving attributable to reformulation of sugar-sweetened beverages to reduce sugar content.(17)
• Improved consumer health due to assured safety of foods on market.
• Improved consumer health due to healthiness of food supply.
• Improved consumer health due to information to support informed choices.
• Improved consumer health literacy.

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative. However, there is significant data and analysis quantifying the costs of unhealthy dietary patterns and benefits of addressing unhealthy aspects of the food environment. We have outlined these in our response to question 29.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry applications. Care must also be taken to ensure applications paid for by industry are not prioritised over proposals in the interest of public health.

It may be appropriate to charge a fee to provide interpretative advice. Any fee structure should have equity considerations including for size of business and whether an organisation is not-for-profit.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Cost recovery on a broad range of activities has the potential to reduce innovation if there are additional financial barriers to bringing new products to market. This would also disadvantage small- and medium-sized enterprises from bringing products to market, compared with large enterprises with more spending capacity. This may lead to a monopoly of the food supply by a low number of large organisations, therefore compromising consumer choice.

Consideration must also be given to the effect of cost-recovery on delaying proposals that benefit public health. Care must also be taken to ensure applications paid for by industry are not prioritised over proposals in the interest of public health.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not make applications to change food standards. The current system prioritises industry applications and there is not pathway designed for public health organisations to request review and amendment of food standards. Dietitians Australia responds to approximately 5 consultations on applications and proposals per year. This is in addition to engaging with other parts of the food regulatory system such as the Health Star Rating, Healthy Food Partnership and Therapeutic Goods Administration.

Engaging with the food regulation system as it currently stands is resource intensive for public health organisations. Large food industry bodies are advantaged, able to invest greater resources to meet short deadlines, and have survey questions tailored to them for ease in response. The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia members work across several sectors, including public health, food industry, research and clinical practice. Members face barriers including:
- Educating consumers about food labelling to support informed choice
- Combatting misleading food labelling and misinformation (eg health claims, unqualified nutrition influencers on social media)
- Interpreting the Food Standards Code
- Supporting consumers to have healthy dietary patterns when ultra-processed foods dominate the food supply
- Accessing food database information to inform research activities

As an organisation, Dietitians Australia faces barriers engaging with the system due to:
• Short submission deadlines comparative to size of consultation papers
• Consultation questions targeted to industry and difficult to respond to from a public health perspective (eg quantifying costs and benefits)
• Consultations often not asking any questions related to public health or consumer experience
• Consultation questions do not address nuance of policy issues, for example bundling approaches into components and options and requiring a positive/negative response when this may not be appropriate for each approach covered by the question.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above commercial interests. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia would not be likely to engage with the food regulation system through the new pathways. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health and consumer stakeholders to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request review and amendment of the Food Standards Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia is primarily concerned with consumer protection. We are supportive of the most efficient process to protect consumer health. As stated on page 8 of our response to the FSANZ Act review scoping paper,(23) FSANZ has played a significant role coordinating several trade recalls and is well positioned to deliver on this activity. Moving the power for initiating recalls from states/territories to FSANZ may reduce the double ups in actions for notifiers, lead to quicker responses, and result in more intelligence gathering about risks in the food system. If FSANZ had greater intel at hand, it could add further value in pre-empting incidents and recalls. FSANZ would need to be appropriately resourced if taking on this responsibility.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have data on costs of food incident or recall. We reiterate that consumer safety and public health should be prioritised over commercial interests.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

This may be valuable for Australia. Moving the power for initiating recalls from states/territories to FSANZ may reduce the double ups in actions for notifiers, lead to quicker responses, and result in more intelligence gathering about risks in the food system. We cannot comment on if it is equally as valuable for New Zealand. We note that an approach does not need to have equal value in different jurisdictions for it to be considered.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

STATEMENTS OF INTENT
We support including a statement of intent alongside food standards in the Food Standards Code. This will be helpful for stakeholders to better understand what the standard aims to achieve. Standards should also be written in plain English to reduce potential for misinterpretation.

RESOURCING FSANZ TO UPDATE AND MAINTAIN GUIDELINES
We support resourcing FSANZ to update and maintain industry guidelines. However, binding interpretations should be able to be sought by any stakeholder, not just industry.

RESOURCING FSANZ TO ASSIST BUSINESSES TO PREPARE AN EVIDENCE DOSSIER TO SUBSTANTIATE GENERAL HEALTH CLAIMS
We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do support FSANZ assessing evidence dossiers substantiating general health claims. The New Zealand Ministry of Primary Industries currently does this to support industry in doing the right thing, and to protect consumer interests. It is essential that claims are substantiated pre-market and are not allowed to market without being assessed by FSANZ. Companies will not be disadvantaged by this, as products may be introduced to market without claims, and claims added once substantiated and assessed by FSANZ. This may be appropriate to add to Standard 1.2.7 rather than the Act.

We recommend a comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review. Overall health profile of foods with health claims and eligibility criteria for products to use a health claim should also be considered.

MINSITERIAL POWERS AND RESPONSIBILITIES
We do not support giving the Minister for Health power to determine what is or is not a food. The Minister for Health is rarely a health expert or food regulation expert and would rely on guidance. If the underlying guidance is documented and clear, there should be no need for the Minister to make a determination. Determinations on this are better sat with FSANZ and TGA, the technical experts on this topic.

Similarly, we do not support giving the Minister for Health power to determine what is a therapeutic good. The Minister for Health is rarely a health expert or therapeutic goods expert and would rely on guidance. If the underlying guidance is documented and clear, there should be no need for the Minister to make a determination. Determinations on this are better sat with FSANZ and TGA, the technical experts on this topic.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have any data to demonstrate savings to industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

This would be valuable for Australia. We cannot comment on if it is equally as valuable for New Zealand. We note that an approach does not need to have equal value in different jurisdictions for it to be considered.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia prefers option 2, that FSANZ becomes the single bi-national regulator. This option would provide more consistency in food regulation across Australian states/territories and New Zealand. More consistent food regulation supports consumer safety and public health.

We advise the department consider the following points:
• Resource sharing across jurisdictions.
• Good governance structures if FSANZ is to be the standard setter and standard enforcer.
• What enforcement looks like, for example proactive market monitoring and any penalty systems.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia does not have data on costs of enforcement in different jurisdictions. We reiterate that consumer safety and public health should be prioritised over cost-saving efforts.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

FSANZ's role is to set food standards. Extending this role into food policy steps into the remit of the Food Ministers Meeting and will not be beneficial to the work of FSANZ, public health or consumer interests.

Further, we note that the draft RIS is unclear as to what legislative changes are intended to implement this component.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources. This may result in further de-prioritisation of proposals and public health outcomes as industry applications at placed at the front of the queue. Further prioritisation of trade and commercial interests will come at the cost of public health. The RIS must assess this cost, both to long-term health of consumers and the subsequent costs for governments.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry-initiated work. Cost recovery mechanisms also risk compromising the independence of FSANZ.

We reiterate that industry-initiated and -funded work should not be fast-tracked and prioritised above the interests of public health. We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

No. The options presented in the draft RIS do not represent the full spectrum of policy approaches that government should consider. The options presented fail to consider any approach that will enable FSANZ to deliver on its objectives related to protection of long-term public health and enabling consumers to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

Option 1, to retain the status quo, will see the current failings of the food regulatory system continue into perpetuity. However, it is preferable to policy approaches in Options 2 and 3 which further prioritise commercial profits at the detriment of public health. Policy approaches should result in a modernised food regulatory system that protects long-term public health and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: the Act does not allow the food regulatory system to meet its objective of protecting public health, specifically chronic and diet-related disease. Policy approaches that would address this policy problem and align with the Aspirations for the Food Regulatory System include, but are not limited to:
• Objectives and statutory functions that enable and prioritise positive long-term health (see q11).
• Enable FSANZ to set strategic priorities to address chronic and diet-related disease.
• Comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review.
• Introduction of a practical and timely pathway for public health and consumer stakeholders to request FSANZ review and amendment of the Food Standards Code to address public health issues.
• Resourcing FSANZ to progress public health proposals. Proposals should have no fewer resources than industry applications.
• Set statutory maximum timeframes for proposals, to support prioritisation and resourcing of this work. Statutory timeframes should be no longer than those set for applications.
• Enable FSANZ to monitor and evaluate how operation of the Food Standards Code aligns with public health objectives, and to amend the Code to support alignment.

By implementation of these reforms, we will create a modernised food regulatory system that puts the health of our nation first.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

We do not support any components of either Options 2 or 3 in their current form. While some elements could be implemented, none of these components should be prioritised above changes that would realise the aspiration of a modernised food regulatory system that protects and promotes public health. Priorities for a modernised food regulatory system must include:
• Objectives and statutory functions that enable and prioritise positive long-term health (see q11).
• Enable FSANZ to set strategic priorities to address chronic and diet-related disease.
• Comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review.
• Introduction of a practical and timely pathway for public health and consumer stakeholders to request FSANZ review and amendment of the Food Standards Code to address public health issues.
• Resourcing FSANZ to progress public health proposals. Proposals should have no fewer resources than industry applications.
• Set statutory maximum timeframes for proposals, to support prioritisation and resourcing of this work. Statutory timeframes should be no longer than those set for applications.
• Enable FSANZ to monitor and evaluate how operation of the Food Standards Code aligns with public health objectives, and to amend the Code to support alignment.
By implementation of these reforms, we will create a modernised food regulatory system that puts the health of our nation first.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

To see fully formatted submission with references, visit https://dietitiansaustralia.org.au/voice-of-daa/advocacy/submissions/2021-submissions/

No. The draft Aspirations for the Food Regulatory System reflects genuine consultation with stakeholders and a positive focus on public health. Reform options in the draft RIS do not at all align with the draft Aspirations.

Reform options aligned with the draft Aspirations would:
• Address challenges and opportunities related to poor nutrition and obesity continuing to impact on public health.
• Respond to consumer expectations for improved product quality, environmental sustainability and ethical production.
• Enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled.
• Support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues.
• Enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply.

None of the proposed reform options do this. The reform options must be completely reworked with significantly greater consideration for public health.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
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Dietitians Australia
The Leading Voice of Nutrition

Review of the Food Standards Australia New Zealand Act 1991 draft Regulatory Impact Statement

Response to consultation
June 2021

Recipient

Food Regulation Modernisation, Department of Health

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Dietitians Australia contact

Elizabeth World, Policy Officer

[redacted]

Dietitians Australia
The Leading Voice of Nutrition

Contents

About Dietitians Australia

Dietitians Australia is the national association of the dietetic profession with over 7500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for food and nutrition for healthier people and healthier communities. Dietitians Australia appreciates the opportunity to provide feedback to FSANZ regarding the draft regulation impact statement on the review of the *Food Standards Australia New Zealand Act 1991* (Cth).

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians have an important role in the food system to support consumers in making healthy food choices and companies with product formulation, marketing, consumer education and compliance.

This submission was prepared by members of the Dietitians Australia Food Regulatory & Policy Committee, with input from the Food & Environment Interest Group, following the Conflict of Interest Management Policy and process approved by the Board of Dietitians Australia. Contributors include Dietitians Australia members with wide ranging expertise in areas including public health, food systems, food industry and academia.

Summary

All Australians want to enjoy healthy happy lives and live well. Eating healthy foods is a key way we can achieve this. Most Australians try to eat well but struggle to pick healthy foods from shelves full of processed products that claim all sorts of benefits without being truthful about how much cheap saturated fat, sugar and salt they're packed with. The food regulatory system as it stands is not set up to protect Australians from the confusion faced in supermarket aisles. This is by far the most significant public health issue linked to our food system today.

Right now, the government has a ripe opportunity to pioneer a modernised food regulatory system that ends this confusion and puts Australians first.

Policy approaches should be developed to address the policy problem missing from the draft RIS, that the Act does not allow the food regulatory system to meet its objective of protecting public health, specifically chronic and diet-related disease. Policy approaches that would address this policy problem and align with the Aspirations for the Food Regulatory System include, but are not limited to:

- Objectives and statutory functions that enable and prioritise positive long-term health.
- Enable FSANZ to set strategic priorities to address chronic and diet-related disease.
- Comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review.
- Introduction of a practical and timely pathway for public health and consumer stakeholders to request FSANZ review and amendment of the Food Standards Code to address public health issues.
- Resourcing FSANZ to progress public health proposals. Proposals should have no fewer resources than industry applications.
- Set statutory maximum timeframes for proposals, to support prioritisation and resourcing of this work. Statutory timeframes should be no longer than those set for applications.
- Enable FSANZ to monitor and evaluate how operation of the Food Standards Code aligns with public health objectives, and to amend the Code to support alignment.

By implementation of these reforms, we will create a modernised food regulatory system that puts the health of our nation first.

The following table outlines Dietitians Australia's response to specific components and sub-components in the draft RIS.

Dietitians Australia
The Leading Voice of Nutrition

Option	Component	Text	Stance
1	1	Retain the status quo.	Oppose
2	1	Clarifying definition of 'protecting public health and safety'.	Support
		Aligning wording around public health protection across s 3 and s 18.	Support
		Expanding the objectives of FSANZ to recognise trade as a core goal.	Oppose
		Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.	Support
		Expanding the objectives of FSANZ to address important priorities of food sustainability.	Support
		Expanding the objectives of FSANZ to include recognition of indigenous culture and expertise.	Support
		Amend FSANZ statutory functions to align with the objectives of the Act.	Support
		FSANZ having statutory functions related to food fraud or food crime.	Oppose
	2	Codes of practice and guidelines in place of regulation.	Oppose
		Risk framework.	Oppose
		FSANZ Board delegating to FSANZ some low-risk decisions to FSANZ CEO.	Support
		Food Ministers' Meeting delegating some low-risk decisions to department officials.	Support
		Food Ministers' Meeting delegating to FSANZ Board.	Oppose
		The Act could provide for FSANZ to accept risk assessments from overseas jurisdictions.	Conditionally support
		Introduction of industry self-substantiation pathway.	Oppose
	3	Build in flexibility to create bespoke regulatory sandboxes.	Oppose
	4	Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.	Support
		Equipping FSANZ to coordinate food safety research across Australia and develop strategic relationships with New Zealand food safety research entities.	Conditionally support
		Positioning FSANZ as the guardian of key food safety databases.	Conditionally support
		Providing for FSANZ to collate and create consumer-facing food safety education materials.	Oppose
		Legislate a function for FSANZ to collect, consolidate and communicate food safety data.	Oppose
	5	FSANZ and the Food Ministers' Meeting could undertake periodic joint agenda-setting to agree on the proposals on which to focus.	Conditionally support

Option	Component	Text	Stance
2	5	FSANZ could partner with government to make intelligence-led decisions and reduce duplication of efforts.	Support
		Earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.	Support
		Collaborating with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response.	Support
		Enhanced collaboration based around information sharing could also extend to international partnerships with overseas jurisdictions (including standard-setting bodies and other regulators).	Support
		FSANZ's databank available to drive high-quality research and policy work both across and outside government	Conditionally support
	6	Creating a smaller, more explicitly skills-based Board.	Oppose
		The Board could be consolidated to eight people.	Oppose
		Streamlining nomination and appointment processes for board members.	Conditionally support
		Moving to a virtual by default board meeting model.	Support
		Investment into business solutions could help staff work more efficiently.	Support
		Cost-recovery mechanisms.	Oppose
3	1	Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative.	Conditionally support
	2	Including a statement of intent alongside food standards in the Food Standards Code.	Support
		Resourcing FSANZ to update and maintain industry guidelines.	Conditionally support
		Resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims.	Conditionally support
		Granting ministerial power to determine what is or is not a food.	Oppose
		Granting ministerial power to determine what is a therapeutic good.	Oppose
	3	Option 1: FSANZ could take on limited enforcement activities.	Conditionally support
		Option 2: FSANZ becomes the single, bi-national regulator.	Conditionally support
	4	Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage.	Oppose

Discussion

Policy problems

1. Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

FSANZ has achieved the objective of the *Food Standards Australia New Zealand Act 1991* (Cth) (the Act) to protect consumers from short term food borne illness. Now is a prime opportunity to review the objectives to ensure the purpose of the Act fits with the changing health and food environments in Australia and New Zealand.

The three key Policy Problems identified in the RIS are:

1. The Act does not support efficient and effective regulation and is burdensome to administer in its current form.
2. Legislation does not enable a strong, resilient, and agile joint food standards system.
3. Current arrangements undermine the power of a single, joint food standards system.

Missing from the RIS is a policy problem widely recognised amongst consumer and health stakeholders: the Act does not allow the food regulatory system to meet its objective of protecting public health, specifically chronic and diet-related disease. Chronic disease is a significant health problem in Australia, affecting half the adult population.[1] One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.[2]

By failing to consider this policy problem of chronic diet-related disease and public health, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices. The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not achieve its primary purpose of protecting public health.

2. What examples or issues are you aware of in the food regulatory system regarding food sustainability?

EVIDENCE BASE

There is a lack of interdisciplinary collaboration and engagement between environmental science, agricultural science 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. Government bodies including FSANZ, NHMRC, CSIRO and the Department of Agriculture could collaborate on this work to support a robust and sustainable food regulatory system.

NEED FOR ACROSS-GOVERNMENT APPROACH

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.

LABELLING

Informed choice on the healthiness of foods is supported by the Health Star Rating, but there is no labelling system in Australia to support informed choice on environmental sustainability of foods. Any claims on food packaging about sustainability are unregulated and may mislead consumers.

A recent publication in The Lancet Planetary Health[3] suggests environmental sustainability labelling would support a sustainable and healthy food system. Environmental sustainability labelling would need to be evidence-based, fit-for purpose, appropriate for the unique setting of the Australia-New Zealand food system, and be trusted by consumers.[4] We recommend type 1 or type 3 labelling as outlined by the International Organization for Standardization[5] be explored. Additional criteria around healthiness of foods should be applied to prevent environmental claims being used to promote unhealthy foods.

MEASUREMENT

Measurement of environmental impact and sustainability is an area of research attention. Australia is producing great amount of evidence in this area, out of CSIRO. Ridoutt and colleagues'[6] 2017 review demonstrates the complexity of assessing the environmental impacts of diets.

COMMUNICATION

Communication about the environmental impacts of foods and the food system is a challenge. Interested stakeholders (ie Department of Health, food industry, public health groups, consumers) have diverse perspectives on the issue. Information available to consumers must be evidence-based and free from undue commercial conflicts of interest.

3. What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

There is currently no requirement in the assessment of novel foods to have regard to whether the novel foods being brought to market are traditional foods of Aboriginal, Torres Strait Islander or Māori peoples. Food expertise of Aboriginal, Torres Strait Islander and Māori peoples should be recognised, particularly the safe consumption and sustainable production of these foods. Further, it should be considered whether commercialisation of traditional foods should be limited to companies owned by Aboriginal, Torres Strait Islander and Māori persons, or approved only with active consultation with Aboriginal, Torres Strait Islander and Māori peoples.

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, not only limited to the introduction of new food products.

Option 1: Retain the status quo

4. Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Negative.

Dietitians Australia does not support Option 1: retain status quo. The status quo does not adequately protect the long-term health of consumers. However, Options 2 and 3 as packaged involve 'less regulatory intervention and associated regulatory burden' (RIS p49). This will come at a cost to public health and consumer interests. We suggest an alternative option in response to questions 47-49.

5. What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Consumers (and therefore governments) will be vulnerable to several risks if the status quo is retained. Risks and consequences include:

- Existing market incentives for manufacturers to introduce new unhealthy products
- Limited or misleading information on food packaging that constrains consumer capacity to make informed choices
- Continued upward trend in unhealthy weight for adults and children
- Increasing prevalence of diet-related disease including heart disease and diabetes[7]
- Ongoing quality of life and economic costs of sugar-related dental decay – $10.5 billion was spent on dental services in 2017-18[8]
- Continued failure to meet objective 2 of the food regulatory system 'supporting the public health objectives to reduce chronic disease related to overweight and obesity'[9]
- Estimated spend of $8.3 to $21 billion per year due to direct and indirect costs of obesity[7, 10-12]
- Failing to meet the targets of the National Preventive Health Strategy[13] and National Obesity Strategy[14]

Processed food companies may incur some costs under the current system due to the requirements of and delays in the application process. However, we do not accept the quantification of these costs in the RIS. We are concerned that in multiple instances (eg p71) the RIS, without analysis, uses costings presented by one industry stakeholder and extrapolates these across industry to attribute a large cost to the failing of the current food regulation system.

6. Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Dietitians Australia does not have data about the cost of delaying bringing products to market. We are concerned that in multiple instances (eg p71) the RIS, without analysis, uses costings presented by one industry stakeholder and extrapolates these across industry to attribute a large cost to the failing of the current food regulation system. This is likely to inflate estimations of the cost to industry.

We discuss the costs of delaying proposals for public health measures in question 7. We reiterate that consumer safety and public health should be prioritised over commercial interests.

7. Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

The draft RIS does not include costs and benefits related to public health, borne by consumers and governments. The RIS must be revised to consider the following costs and benefits.

Costs

- Poor health attributable to delays in progressing food regulatory measures. For example, there was a significant delay in developing and implementing warning labels for pregnant people on alcohol, despite the health cost of Foetal Alcohol Spectrum Disorder (FASD) of $27.6 billion over 20 years.[15]
- Poor health attributable to dietary patterns. One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.[2]
- Social costs of poor health. For example, adults with multiple chronic conditions are less likely to be working than adults with no chronic conditions (67% compared with 83%) and more likely to have a restriction or limitation in everyday activities (50% compared with 7.9%).[16]
- Economic costs of poor health and diet-related disease. Obesity alone is estimated to cost Australia $8.3 to $21 billion per year.[7, 10-12]
- Administrative costs to consumer and public health stakeholders of participating in lengthy review processes.

Benefits

- Expenditure savings. For example, $502 million net saving attributable to kilojoule labelling on fast food menus or $250.6 million net saving attributable to reformulation of sugar-sweetened beverages to reduce sugar content.[17]
- Improved consumer health due to assured safety of foods on market.
- Improved consumer health due to healthiness of food supply.
- Improved consumer health due to information to support informed choices.
- Improved consumer health literacy.

8. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system. This same analysis can be used to quantify the benefits of these policies once implemented.

Example: The Ministerial Forum on Food Regulation directed FSANZ to develop a mandatory standard for warning labels for pregnant people on alcohol in October 2018. This work was not completed until 2 years later when the Forum accepted a draft standard in July 2020. The RIS for this proposal estimated the economic cost of Foetal Alcohol Spectrum Disorder (FASD) to be $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. The RIS stated that prevention of just 1.18% (n=183) of FASD cases would offset the costs of the mandatory labelling scheme. Using these conservative figures, each year of delay cost $13.8 million and a preventable 183 cases of FASD.

9. What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Consumers will be vulnerable to several risks if the status quo is retained. Risks and consequences include:

- Existing market incentives for manufacturers to introduce new unhealthy products
- Limited or misleading information on food packaging that constrains consumer capacity to make informed choices
- Continued upward trend in unhealthy weight for adults and children
- Increasing prevalence of diet-related disease including heart disease and diabetes[7]
- Ongoing costs of sugar-related dental decay – $10.5 billion was spent by consumers and the government on dental services in 2017-18[8]
- Continued failure to meet objective 2 of the food regulatory system 'supporting the public health objectives to reduce chronic disease related to overweight and obesity'[9]
- Estimated spend of $8.3 to $21 billion per year due to direct and indirect costs of obesity[7, 10-12]
- Failing to meet the targets of the National Preventive Health Strategy[13] and National Obesity Strategy[14]

10. What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements? (Note: this question is for jurisdictional regulators)

Not applicable.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11. Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Negative.

CLARIFYING DEFINITION OF 'PROTECTING PUBLIC HEALTH AND SAFETY'

Dietitians Australia supports clarifying s3 of the Act by including a definition of 'protecting public health and safety'. We agree the definition used should be the same as 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.'

CHANGES TO OBJECTIVES

We support aligning wording around public health across s3 and s18 to 'a high standard of safety and public health protection'.

We do not support expansion of FSANZ objective to recognise trade as a core goal. The protection of public health and safety must continue to be the primary objective of FSANZ. In recognition of the occasional conflicts between public health and trade, it is important that FSANZ has a clearly articulated mandate to promote health over trade.

We support establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure. This will ensure the interests of public safety and health are prioritised over any undue political influence.

We support expanding the objectives of FSANZ to address important priorities of food sustainability. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

We support expanding the objectives of FSANZ to include recognition of indigenous culture and expertise. 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, not only limited to the introduction of new food products. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and Māori peoples on how this can best be achieved.

We recommend prioritisation under s18 reads as follows to enable decision-making where public health and safety and commerce conflict:

> 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 accurate and accessible information relating to food to enable consumers to make informed choices
>
> 2. In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:

c. the need for standards to be based on risk analysis using the best available scientific evidence

d. the promotion of consistency between domestic and international food standards

e. the information required relating to food to enable consumers to make informed choice

f. the environmental sustainability and minimising the environmental impact of the food supply

g. recognition of indigenous culture and food expertise

h. the need to prevent misleading or deceptive conduct

i. equitable opportunity for good health across population subgroups

j. the promotion of fair trading in food

k. support to protect and improve the healthiness of the food supply

l. support an efficient and internationally competitive food industry.

FSANZ STATUTORY FUNCTIONS

We support changes to FSANZ statutory functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support FSANZ having statutory functions related to food fraud or food crime. These are more appropriate to be handled by the ACCC and other enforcement agencies. FSANZ may support activities related to food fraud and food crime, but these should not be a key focus of FSANZ.

12. If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Dietitians Australia prefers use of a broad definition of sustainability including environmental, health and social impacts. Economic impacts should only be considered insofar as they result from environmental, health and social impacts.

The 1987 Our Common Future report by the World Commission on Environment and Development (alternatively, the Brundtland Commission) defined sustainability as 'development which meets the needs of current generations without compromising the ability of future generations to meet their own needs.'[18] The report identifies four dimensions of sustainability: society, environment, culture and economy. Further reference for a definition of sustainability should be taken from the 2030 Agenda for Sustainable Development,[19] adopted by United Nations member states including Australia and New Zealand.

Regulatory measures should be put in place to prevent environmental claims being used to promote unhealthy foods. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13. What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

A greater focus on sustainability will future-proof our agricultural and food sectors in a rapidly changing world. Our food system must change to enable Australia and New Zealand to deliver on our international obligations to reduce carbon emissions and to present as a player in the global market.

Earlier this year, the European Union (EU) resolved to put a carbon price on certain goods imported from outside the EU if these countries are not ambitious enough about climate change.[20] In the Asia-Pacific, CSIRO predicts opportunities driven by growth and consumer preferences for sustainable and natural foods could be worth $25 billion by 2030.[21] If the Australia and New Zealand food system makes changes to support environmental sustainability, we could command a premium in export markets. Conversely, failure to do so could see a significant drop in desirability of our exports in the global market.

Further, in a world with finite resources, we should encourage a shift towards food production and dietary patterns that are both healthy and sustainable.[22]

14. How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Dietitians Australia does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and Māori peoples.

15. What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Dietitians Australia does not have expertise in this area. We strongly recommend consultation with peak bodies for Aboriginal, Torres Strait Islander and Māori peoples.

16. Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Negative.

Dietitians Australia supports the concept of facilitating risk-based approaches to developing or amending food regulatory measures. To maintain public confidence in FSANZ's integrity it is critical that the risk-based framework be publicly available and reasons for risk categorisations of all applications and proposals be documented and transparent.

CODES OF PRACTICE AND GUIDELINES

We do not support use of guidelines or codes of practice in place of regulation. Guidelines and codes of practice are non-binding. In the interest of consumer safety and public health, the food regulatory system must be based on regulation, not voluntary, non-binding guidelines or codes of practice.

Guidelines should be used only to explain how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

RISK FRAMEWORK

We support the concept of adopting a risk-based model. The framework outlined on page 54 of the RIS needs further development, including:

- Extent of risk must explicitly include risks to long-term health, such as diet-related preventable disease.
- Scope of impact must consider not only immediate impacts, but long-term health impacts.
- Existing evidence cannot include industry self-substantiation.

Any application that has an impact on short-term public health and safety or long-term health should not be considered low risk.

The risk framework should be developed outside the legislative reform process. All governments that form part of the food regulatory system must be involved. Wider stakeholder consultation and regular review should occur to prevent negative outcomes.

DELEGATION

We support allowing the FSANZ Board to delegate some low-risk decisions to the FSANZ CEO. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low risk. Internal business processes would need to ensure that the Board retains oversight over emerging risks or trends through appropriate reporting arrangements.

We support allowing the Food Ministers Meeting to delegate some low-risk decisions to department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low risk.

ASSESSMENTS FROM OVERSEAS JURISDICTIONS

We conditionally support the ability for FSANZ to accept risk assessments from overseas jurisdictions using the minimal check pathway. To some extent, FSANZ already adopts this approach for the use of permitted flavourings. Standard 1.1.2 permits flavours if they are listed in specific publications. Greater harmonisation for low-risk change is appropriate. We do not support automatic adoption of new standards from select international regulatory systems. An expedited process for importing regulation from jurisdictions with equivalent or stronger regulatory processes (eg Canada) may be appropriate. It is important that the system be transparent, credible and risk based. Therefore, if harmonisation is increased it is essential that the scientific and policy bases for FSANZ's decision are publicly available. For certainty for consumers and businesses, the sources of international food safety decisions must be clearly identified and limited to credible and scientifically rigorous agencies such as the EFSA.

INDUSTRY SELF-SUBSTANTIATION PATHWAY

We are strongly opposed to introduction of an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17. Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

No. Dietitians Australia does not support the Forum delegating decision-making to FSANZ for low-risk technical amendments, such as processing aids applications. The Food Minsters Meeting delegating decisions to the FSANZ Board removes power from jurisdictions and risks the FSANZ CEO having too much power. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18. What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Codes of practice or guidelines should not be used to replace food standards. Guidelines should only be used to explain how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19. Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Dietitians Australia cannot quantify the administrative burden on industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

20. Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Dietitians Australia does not have any data to demonstrate savings to industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

21. Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Negative.

Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

The example given on page 61 of the RIS that Standard 1.2.7 Nutrition, health and related claims have an adverse impact on innovation implies that industry profit is more important than consumer protection. If regulatory sandboxes are put in place and products are released with claims that do not meet Standard 1.2.7, consumers will be exposed to misleading messaging. We do not accept the notion that standards around claims on packaging are a barrier to innovation. Those standards do not stop or delay introduction of products to market.

22. What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing exemptions undermines the system and risks consumer health and safety.

23. Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Positive.

RESOURCING FSANZ

Dietitians Australia supports resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.

We ask that the RIS incorporate a specific public health review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection. This must include review of existing standards and the capacity to introduce new standards. This process must recognise the resource constraints of public health organisations and enable evidence review by FSANZ.

The review process outlined in the RIS appears to be focused on reducing regulatory burden for the food industry and on short-term food safety issues. This system is unlikely to achieve best practice public health outcomes. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes. We support efficient regulation, but a review process that is focused on reducing regulatory burden is unlikely to lead to the introduction of meaningful public health measures.

FSANZ AS COORDINATOR OF FOOD SAFETY RESEARCH AND DATABASES

We conditionally support equipping FSANZ to coordinate food safety research across Australia and develop strategic relationships with New Zealand food safety research entities; and positioning FSANZ as the guardian of key food safety databases. FSANZ must have the resourcing to deliver on this as well as core functions. This would provide an opportunity for FSANZ to establish a focused research agenda and ensure efficient allocation and use of resources to support research priorities. Coordinating stronger research linkages across industry, universities, government agencies and private organisations will also facilitate knowledge sharing and maximise the value of research findings.

FSANZ AND CONSUMER-FACING MATERIALS

We do not support providing for FSANZ to collate and create consumer-facing food safety education materials. Consumer-facing materials should come from a body who holds a high level of consumer recognition and trust relating to food and health. Federal and state/territory health departments have greater consumer communication expertise, name recognition and trust to enable effective consumer education in food safety. Partnerships between FSANZ, health departments, Dietitians Australia and the Food Safety Information Council would support unification to food safety across Australia, create efficiencies and eliminate challenges associated with the need to achieve state and territory cooperation.

24. Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

No. It is our understanding FSANZ may fulfil this role without it being legislated.

25. Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Positive.

JOINT AGENDA SETTING

Dietitians Australia conditionally supports FSANZ and the Food Ministers' Meeting undertaking periodic joint agenda-setting to agree on the proposals on which to focus. FSANZ should not be used as a tool to advance political agendas beyond the interests of consumer safety and public health. Public health issues, in particular long-term health and preventable diet-related disease, should consistently be prioritised. Further clarification is needed about how priorities would be set and which party has ultimate decision-making powers.

PARTNERING AND REDUCTION OF DUPLICATION

We support FSANZ partnering with the government to make intelligence-led decisions and reduce duplication of efforts. FSANZ must be given the resources to effectively engage with stakeholders.

We support earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.

We support collaborating with jurisdictional enforcement agencies to identify emerging risks and activate the appropriate regulatory response.

We support international partnerships with overseas jurisdictions. However, this should not result in automatic adoption of overseas assessments or regulations. We discuss this further in our response to question 16.

DATABANK

We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring, and research. Having a centralized database would ensure independence, consistency and sustainability of ongoing monitoring efforts (eg Healthy Food Partnership targets). If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

26. Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Yes, if the data supports their objectives and given it would be a credible source. There are some existing data sources (eg Food Switch database, held by the George Institute and FoodTrack held jointly by CSIRO and the Heart Foundation) that universities and private industry pay to access. The FSANZ offering would need to be at a competitive price and of similar or superior quality. If a fee-for-service is established for this it should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

27. Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Negative.

FSANZ BOARD

Dietitians Australia has reservations about a smaller, more explicitly skills-based Board. The current FSANZ Board of 12 members includes only 3 health experts, only 1 of which has expertise in human nutrition. We are concerned that a smaller Board will result in less of a skills mix, particularly nutrition, public health and consumer representation.

The concept of removing the statutory requirement for the Minister to seek nominations from prescribed organisations seems appropriate with the goal of reducing commercial conflicts of interest and industry over-representation. However, this may also reduce public health and consumer representation. If the statutory requirement is removed, there must be clear and transparent criteria for Board member skills mix. Conflicts of interests must also be strictly managed, consistent with the principles of the draft National Preventive Health Strategy.

We support virtual Board meetings as a responsiveness and cost-saving measure.

INVESTMENT INTO BUSINESS SOLUTIONS

Dietitians Australia supports investment to support staff efficiency. We recommend that FSANZ staff are actively consulted on this.

COST-RECOVERY MECHANISMS

Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry-initiated work. Equity considerations around fast-tracking industry-initiated and -funded work above the interests of public health should be carefully considered.

28. What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

OVERALL

Option 2 represents a further prioritisation of commercial profits ahead of public health. Many components of proposed reform will create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform. Option 2 will not meet the primary objective of a modernised food regulatory system to protect public health and will not result in a fit-for-purpose food regulatory system.

COMPONENT 1

Prioritisation of trade presents a risk to consumer safety and public health.

Expanding FSANZ's statutory functions to include food fraud and food crime risks redirection of resources away from the key focus of setting standards to protect consumer safety and public health.

COMPONENT 2

Use of guidelines or codes of practice in place of food standards weakens the food regulatory system and presents a risk to consumers.

The risk framework must not include industry self-substantiation. This would undermine the robustness of the system and leave it vulnerable to manipulation.

The Food Minsters Meeting delegating decisions to the FSANZ Board removes power from jurisdictions and risks the FSANZ CEO having too much power. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

Automatic adoption of assessments from overseas jurisdictions presents the risk of undermining the rigour of the trans-Tasman system. This may result in decreased consumer safety, poorer long-term health and decreased consumer trust in the food regulatory system.

An industry self-substantiation pathway represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine

the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

COMPONENT 3

Regulatory sandboxes as described in the draft RIS present an unacceptable risk to public health. Every item in the Food Standards Code is designed to be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

COMPONENT 4

FSANZ becoming a coordinator of food safety research and databases presents the risk of resources being stretched, and redirected from the core function of setting standards to protect consumers. FSANZ must be adequately resourced for any additional responsibilities it is to take on.

FSANZ taking on creation of consumer-facing food safety materials presents the risk of consumers not heeding the advice, or knowing how to access it, due to lack of familiarity with FSANZ. This function is better kept to health departments, Dietitians Australia and the Food Safety Information Council.

COMPONENT 5

Any fee-for-service mechanism should take an equitable approach such as a tiered fee structure so smaller and not-for-profit organisations can access research material.

We caution against international collaboration being used as a justification for automatic adoption of overseas assessments or regulations.

COMPONENT 6

A smaller FSANZ Board without quotas for public and consumer representatives presents a risk of inadequate skills mix on the Board, and insufficient representation of consumer interests.

Cost recovery mechanisms for industry-initiated work may raise intellectual property issues. Equity considerations around fast-tracking industry-initiated and -funded work above the interests of public health should be carefully considered.

29. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

The draft RIS does not include costs and benefits related to public health, borne by consumers and governments. The RIS must be revised to consider the following costs and benefits.

Costs

- Food-borne illness and poor long-term health attributable to less oversight and less pre-market assessment.
- Poor health attributable to delays in progressing proposals related to public health. For example, there was a significant delay in developing and implementing warning labels for pregnant people on alcohol, despite the health cost of Foetal Alcohol Spectrum Disorder (FASD) of $27.6 billion over 20 years.[15]
- Poor health attributable to dietary patterns, influenced by food supply dominated by unhealthy processed foods. One-third of Australia's burden of disease is attributable to dietary risks and diet-related disease.[2]

- Social costs of poor health. For example, adults with multiple chronic conditions are less likely to be working than adults with no chronic conditions (67% compared with 83%) and more likely to have a restriction or limitation in everyday activities (50% compared with 7.9%).[16]
- Economic costs of poor health and diet-related disease. Obesity alone is estimated to cost Australia $8.3 to $21 billion per year.[7, 10-12]
- Administrative costs to consumer and public health stakeholders of participating in lengthy review processes.

Benefits

- Expenditure savings. For example, $502 million net saving attributable to kilojoule labelling on fast food menus or $250.6 million net saving attributable to reformulation of sugar-sweetened beverages to reduce sugar content.[17]
- Improved consumer health due to assured safety of foods on market.
- Improved consumer health due to healthiness of food supply.
- Improved consumer health due to information to support informed choices.
- Improved consumer health literacy.

30. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative. However, there is significant data and analysis quantifying the costs of unhealthy dietary patterns and benefits of addressing unhealthy aspects of the food environment. We have outlined these in our response to question 29.

31. Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry applications. Care must also be taken to ensure applications paid for by industry are not prioritised over proposals in the interest of public health.

It may be appropriate to charge a fee to provide interpretative advice. Any fee structure should have equity considerations including for size of business and whether an organisation is not-for-profit.

32. What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Cost recovery on a broad range of activities has the potential to reduce innovation if there are additional financial barriers to bringing new products to market. This would also disadvantage small- and medium-sized enterprises from bringing products to market, compared with large enterprises with more spending capacity. This may lead to a monopoly of the food supply by a low number of large organisations, therefore compromising consumer choice.

Consideration must also be given to the effect of cost-recovery on delaying proposals that benefit public health. Care must also be taken to ensure applications paid for by industry are not prioritised over proposals in the interest of public health.

33. How often do you currently engage with the food regulation system through making applications to change food standards?

Dietitians Australia does not make applications to change food standards. The current system prioritises industry applications and there is not pathway designed for public health organisations to request review and amendment of food standards. Dietitians Australia responds to approximately 5 consultations on applications and proposals per year. This is in addition to engaging with other parts of the food regulatory system such as the Health Star Rating, Healthy Food Partnership and Therapeutic Goods Administration.

Engaging with the food regulation system as it currently stands is resource intensive for public health organisations. Large food industry bodies are advantaged, able to invest greater resources to meet short deadlines, and have survey questions tailored to them for ease in response. The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

34. What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Dietitians Australia members work across several sectors, including public health, food industry, research and clinical practice. Members face barriers including:

- Educating consumers about food labelling to support informed choice
- Combatting misleading food labelling and misinformation (eg health claims, unqualified nutrition influencers on social media)
- Interpreting the Food Standards Code
- Supporting consumers to have healthy dietary patterns when ultra-processed foods dominate the food supply
- Accessing food database information to inform research activities

As an organisation, Dietitians Australia faces barriers engaging with the system due to:

- Short submission deadlines comparative to size of consultation papers
- Consultation questions targeted to industry and difficult to respond to from a public health perspective (eg quantifying costs and benefits)
- Consultations often not asking any questions related to public health or consumer experience
- Consultation questions do not address nuance of policy issues, for example bundling approaches into components and options and requiring a positive/negative response when this may not be appropriate for each approach covered by the question.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above commercial interests. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35. Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Dietitians Australia would not be likely to engage with the food regulation system through the new pathways. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health and consumer stakeholders to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request review and amendment of the Food Standards Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Neutral.

Dietitians Australia is primarily concerned with consumer protection. We are supportive of the most efficient process to protect consumer health. As stated on page 8 of our response to the FSANZ Act review scoping paper,[23] FSANZ has played a significant role coordinating several trade recalls and is well positioned to deliver on this activity. Moving the power for initiating recalls from states/territories to FSANZ may reduce the double ups in actions for notifiers, lead to quicker responses, and result in more intelligence gathering about risks in the food system. If FSANZ had greater intel at hand, it could add further value in pre-empting incidents and recalls. FSANZ would need to be appropriately resourced if taking on this responsibility.

37. Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Dietitians Australia does not have data on costs of food incident or recall. We reiterate that consumer safety and public health should be prioritised over commercial interests.

38. Is FSANZ coordinating food recalls/incident response a function that would be equally valuable for Australia and New Zealand?

This may be valuable for Australia. Moving the power for initiating recalls from states/territories to FSANZ may reduce the double ups in actions for notifiers, lead to quicker responses, and result in more intelligence gathering about risks in the food system. We cannot comment on if it is equally as valuable for New Zealand. We note that an approach does not need to have equal value in different jurisdictions for it to be considered.

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Negative.

STATEMENTS OF INTENT

We support including a statement of intent alongside food standards in the Food Standards Code. This will be helpful for stakeholders to better understand what the standard aims to achieve. Standards should also be written in plain English to reduce potential for misinterpretation.

RESOURCING FSANZ TO UPDATE AND MAINTAIN GUIDELINES

We support resourcing FSANZ to update and maintain industry guidelines. However, binding interpretations should be able to be sought by any stakeholder, not just industry.

RESOURCING FSANZ TO ASSIST BUSINESSES TO PREPARE AN EVIDENCE DOSSIER TO SUBSTANTIATE GENERAL HEALTH CLAIMS

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do support FSANZ assessing evidence dossiers substantiating general health claims. The New Zealand Ministry of Primary Industries currently does this to support industry in doing the right thing, and to protect consumer interests. It is essential that claims are substantiated pre-market and are not allowed to

market without being assessed by FSANZ. Companies will not be disadvantaged by this, as products may be introduced to market without claims, and claims added once substantiated and assessed by FSANZ. This may be appropriate to add to Standard 1.2.7 rather than the Act.

We recommend a comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review. Overall health profile of foods with health claims and eligibility criteria for products to use a health claim should also be considered.

MINSITERIAL POWERS AND RESPONSIBILITIES

We do not support giving the Minister for Health power to determine what is or is not a food. The Minister for Health is rarely a health expert or food regulation expert and would rely on guidance. If the underlying guidance is documented and clear, there should be no need for the Minister to make a determination. Determinations on this are better sat with FSANZ and TGA, the technical experts on this topic.

Similarly, we do not support giving the Minister for Health power to determine what is a therapeutic good. The Minister for Health is rarely a health expert or therapeutic goods expert and would rely on guidance. If the underlying guidance is documented and clear, there should be no need for the Minister to make a determination. Determinations on this are better sat with FSANZ and TGA, the technical experts on this topic.

40. Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Dietitians Australia does not have any data to demonstrate savings to industry. However, we reiterate that consumer safety and public health be prioritised above commercial interests.

41. Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

This would be valuable for Australia. We cannot comment on if it is equally as valuable for New Zealand. We note that an approach does not need to have equal value in different jurisdictions for it to be considered.

42. Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Neutral.

Dietitians Australia prefers option 2, that FSANZ becomes the single bi-national regulator. This option would provide more consistency in food regulation across Australian states/territories and New Zealand. More consistent food regulation supports consumer safety and public health.

We advise the department consider the following points:

- Resource sharing across jurisdictions.
- Good governance structures if FSANZ is to be the standard setter and standard enforcer.
- What enforcement looks like, for example proactive market monitoring and any penalty systems.

43. Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Dietitians Australia does not have data on costs of enforcement in different jurisdictions. We reiterate that consumer safety and public health should be prioritised over cost-saving efforts.

44. Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Negative.

FSANZ's role is to set food standards. Extending this role into food policy steps into the remit of the Food Ministers Meeting and will not be beneficial to the work of FSANZ, public health or consumer interests.

Further, we note that the draft RIS is unclear as to what legislative changes are intended to implement this component.

45. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources. This may result in further de-prioritisation of proposals and public health outcomes as industry applications at placed at the front of the queue. Further prioritisation of trade and commercial interests will come at the cost of public health. The RIS must assess this cost, both to long-term health of consumers and the subsequent costs for governments.

46. What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Dietitians Australia cautions that intellectual property issues may arise with cost-recovery mechanisms for industry-initiated work. Cost recovery mechanisms also risk compromising the independence of FSANZ.

We reiterate that industry-initiated and -funded work should not be fast-tracked and prioritised above the interests of public health. We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47. Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

No. The options presented in the draft RIS do not represent the full spectrum of policy approaches that government should consider. The options presented fail to consider any approach that will enable FSANZ to deliver on its objectives related to protection of long-term public health and enabling consumers to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

Option 1, to retain the status quo, will see the current failings of the food regulatory system continue into perpetuity. However, it is preferable to policy approaches in Options 2 and 3 which further prioritise commercial profits at the detriment of public health. Policy approaches should result in a modernised food regulatory system that protects long-term public health and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: the Act does not allow the food regulatory system to meet its objective of protecting public health, specifically chronic and diet-related disease. Policy approaches that would address this policy problem and align with the Aspirations for the Food Regulatory System include, but are not limited to:

- Objectives and statutory functions that enable and prioritise positive long-term health (see q11).
- Enable FSANZ to set strategic priorities to address chronic and diet-related disease.
- Comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review.
- Introduction of a practical and timely pathway for public health and consumer stakeholders to request FSANZ review and amendment of the Food Standards Code to address public health issues.
- Resourcing FSANZ to progress public health proposals. Proposals should have no fewer resources than industry applications.
- Set statutory maximum timeframes for proposals, to support prioritisation and resourcing of this work. Statutory timeframes should be no longer than those set for applications.
- Enable FSANZ to monitor and evaluate how operation of the Food Standards Code aligns with public health objectives, and to amend the Code to support alignment.

By implementation of these reforms, we will create a modernised food regulatory system that puts the health of our nation first.

48. Which components of each reform option do you consider to be your sector's highest priorities?

We do not support any components of either Options 2 or 3 in their current form. While some elements could be implemented, none of these components should be prioritised above changes that would realise the aspiration of a modernised food regulatory system that protects and promotes public health. Priorities for a modernised food regulatory system must include:

- Objectives and statutory functions that enable and prioritise positive long-term health (see q11).
- Enable FSANZ to set strategic priorities to address chronic and diet-related disease.
- Comprehensive review of the health claims process to ensure it supports positive long-term health outcomes and informed consumer choice. Appropriate use of health claims, that is to support informed choice and healthy dietary patterns, should be considered in this review.
- Introduction of a practical and timely pathway for public health and consumer stakeholders to request FSANZ review and amendment of the Food Standards Code to address public health issues.
- Resourcing FSANZ to progress public health proposals. Proposals should have no fewer resources than industry applications.
- Set statutory maximum timeframes for proposals, to support prioritisation and resourcing of this work. Statutory timeframes should be no longer than those set for applications.
- Enable FSANZ to monitor and evaluate how operation of the Food Standards Code aligns with public health objectives, and to amend the Code to support alignment.

By implementation of these reforms, we will create a modernised food regulatory system that puts the health of our nation first.

Alignment with draft Aspirations for the Food Regulatory System

49. Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

No. The draft Aspirations for the Food Regulatory System reflects genuine consultation with stakeholders and a positive focus on public health. Reform options in the draft RIS do not at all align with the draft Aspirations.

Reform options aligned with the draft Aspirations would:

- Address challenges and opportunities related to poor nutrition and obesity continuing to impact on public health.
- Respond to consumer expectations for improved product quality, environmental sustainability and ethical production.
- Enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled.
- Support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues.
- Enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply.

None of the proposed reform options do this. The reform options must be completely reworked with significantly greater consideration for public health.

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Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 21:25:02**

About you

What is your name?

Name:
Gary Sacks

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Global Obesity Centre (GLOBE), Deakin University

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

The Global Obesity Centre (GLOBE) is a world-class research group based in the Institute for Health Transformation at Deakin University. GLOBE is a designated World Health Organization Collaborating Centre for Obesity Prevention, with strong links to governments, health services, other research groups and a diverse range of collaborators nationally and internationally. Our vision is “To catalyse improvements in population health, with a focus on obesity, through innovative research that empowers people and enables healthier environments.” GLOBE is a partner of the Obesity Policy Coalition (OPC).
For further details please see: https://globalobesity.com.au/

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

There are key concerns about the lack of consideration in the RIS of the following policy problems that apply both to Australia and New Zealand:

1. 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.
2. The Act in its current form does not enable the food regulatory system to meet another of its primary objectives - the provision of adequate information to enable consumers to make informed choices.

The RIS must be amended to include these policy problems to fulfil the review’s Terms of Reference, which call for review of the effectiveness of the Act and FSANZ’s operations and responsibilities.

The RIS also fails to acknowledge the very real threat of poor diets, which lead to overweight/obesity, type-2 diabetes, cardiovascular disease and cancer. This is a clear misalignment with other government strategies and investments, including the Preventative 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 . Current arrangements undermine the primary purpose of the Act because they are primarily focused on the interests of the food industry and short-term public health issues and are not fit for purpose to protect long term public health, especially diet-related preventable disease. This manifests in many ways, including by prioritising industry applications ahead of proposals to benefit public health, by failing to provide a fit for purpose pathway for public health organisations to seek amendment and introduction of food standards, and by allowing the food industry to self-substantiate evidence of health claims.

The RIS must be revised to include these policy problems, to assess each proposed component of reform against it, and to consider new components that are required to address them. If this is not done, the Act will not effectively protect public health and it will not provide for adequate information to enable consumers to make informed choices. As a consequence, it will not achieve its primary purpose.

By failing to consider these policy problems, the RIS also fails to fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

We note that the RIS says (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. This analysis must be done throughout the RIS, with the same or more detailed analysis than is provided in relation to the impact on the food industry.

We know that, due to the success of the food regulatory system, Australians are protected from short term food borne illness -- and this protection must be maintained. However, Australians are not effectively protected from long-term health impacts linked to food and diets. 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 7.3% to the burden of disease. Around two thirds of Australian adults and one quarter 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. In addition, 47.8% of Australian adults exceed the World Health Organization's recommendation for free sugar intake, and 90% of Australians older than 15 have experienced dental decay in their permanent teeth.

The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will make an important contribution to improving diets, reducing overweight and obesity, as well as related diseases such as type two diabetes, cardiovascular disease and cancer, thereby effectively protecting long-term public health into the future.

We also recommend that RIS is revised to incorporate a health equity lens and analyses differential impact. As a regulatory tool, the Act has the potential to have the most benefit for Australians experiencing greater barriers to healthy diets and achieving good health. There are significant inequities in poor diet, overweight and obesity, with Australians from lower socioeconomic areas, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas more likely to be above a healthy weight.

The public health concerns outlined in Australia are likely to be equally relevant in New Zealand.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.

Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
- able to be independently verified by reference to clear and consistent standards
- not used to promote foods that are unhealthy overall

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect Aboriginal and Torres Strait Islander people more generally. The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

We recommend that the Department consult directly with Aboriginal and Torres Strait Islander organisations in Australia and with Maori tangata whenua of New Zealand on this issue.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

Option 1 represents a negative outcome for public health. It is, however, a better option than Options 2 and 3 which introduce potential for additional harm to public health.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect Australian consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable diseases.

Key failings of the current system are:
• Paid industry applications to modify standards are prioritised ahead of proposals that are likely to have public health benefit, resulting in significant delays in progressing public health measures
• The Act does not provide a clear, practical and timely pathway that is designed for public health to seek timely amendments to standards to address long-term public health issues, meaning that key public health issues are not considered at all or that Australia falls significantly behind best practice
• The approach to regulating and enforcing health claims is not adequate, as it relies on industry self-substantiation and is not effectively and consistently enforced

While the current system prioritises industry interests ahead of public health, the proposed options 2 and 3 in the RIS shift this balance even further, to the detriment of the health of Australian consumers. Options 2 and 3 make it easier for the processed food industry to sell and promote more ultra-processed food that is harmful to health with less oversight, increase barriers to public health reform and centralise decision making, undermining the integrity of the joint food regulatory system.

We support the retention and improvement of a preventive approach that assesses impact to short and long-term health and safety before food can be sold. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred. As the draft RIS notes, a system that requires industry to demonstrate that substances are safe before they can be used is the most effective system of harm prevention.

We fully support a strong, effective food regulatory system that protects the health of all Australians, and we agree with the statement in the RIS that the Act is dated and that its effectiveness is diminishing. We support some elements of options 2 and 3, where they may improve efficiency without increasing risks to public health and to consumer information. Overall, however, the proposed reforms will not create a food regulatory system that is fit for purpose in protecting public health. Instead, the reforms prioritise the interests of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australians and on Australia's health system.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

Risks to consumers and public health
Key risks to consumers and to public health in retaining the status quo are:

• the health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease and dental health. These health risks are the higher risk of poor diet, overweight and obesity, dental decay and diet and weight-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as we know that overweight and obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS – the RIS must be amended to include detailed assessment of these risks.
• the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk. This should be compared to an analysis of the economic impacts of an improved food supply and a reduction in diet-related preventable disease.
• the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.
• the health and economic risks of limited or confusing information on product packaging that reduces consumer capacity to make informed choices.

Risks to government
A key risk borne by government is the significant economic cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these risk factors in the community. The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity). A food regulatory system that is not fit for purpose to promote a healthy food supply and to

support interventions to prevent poor diet, obesity and related preventable disease, in Australian children and adults, will incur significant economic costs for all Australian governments. These risks must be addressed and quantified in the RIS analysis.

The cost of poor dental health that is borne by governments must also be considered.

Risks to industry
We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

We support the Obesity Policy Coalition's submission, as detailed below.

We do not have relevant data. We note that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable, not based solely on self-reported industry data, and must be representative of the application process overall, not based on isolated examples.

The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board (see costings on p7 of the RIS, for example). This approach cannot be used to demonstrate costs associated with the current system and is likely to lead to inflated, inaccurate figures. Further, the RIS assessment of the costs to industry of regulatory compliance do not meet the requirements 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.

In assessing the opportunity costs to industry, the RIS must also consider the benefit of a preventive and comprehensive approach, and the health and economic costs incurred by individuals and governments if the existing approval processes are adapted to remove or weaken oversight.

As well as assessing the opportunity cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments, as well as industry. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:
Costs
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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. See a case study below in response to question 8.
• 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
• 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.

Benefits:
• 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

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We support the Obesity Policy Coalition's submission, as detailed below.

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering assessments of the economic and health impact of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the likely effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make it more difficult to implement public health measures or result in measures that are weaker and do not reflect best practice.

Case Study: Pregnancy warning labels on alcohol
The recent 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 RIS 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.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

Key risks to consumers and to public health in retaining the status quo are:
• the health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks and impacts are inequitably distributed across the population and are more likely to be experienced by lower socioeconomic groups, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and to ensure mandatory food labelling to enable consumers to make informed choices that benefit their diet and health.
• These health issues are also linked to economic risk, as we know that overweight and obesity, and diet-related preventable disease, including dental health, lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual Australians and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.
• The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include analysis of this risk.
• The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

N/A

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

Overall option 2, component 1 results in a negative outcome for public health. Option 2, component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures. Some small elements, however, do make a positive contribution and we will discuss each element of this component in turn.

Objects and factors to which FSANZ must have regard

1. Clarification of definition of public health
We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal
We strongly oppose this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good '...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to Australia adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where Australia lags behind in public health protection, when the draft Aspirations of the Food Regulation System identifies the goal of becoming 'a world-class system'.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability
We support the inclusion of sustainability as a core goal of the Act. However, in doing so it is critical that sustainability cannot be used opportunistically by the food industry in a way that compromises public health, such as the promotion of unhealthy foods through sustainability claims. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise
We support the inclusion of Indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products. We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander organisations in Australia, and Maori organisations in New Zealand.

5. Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard
We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

5. Further changes to s18 – and role of FSANZ
We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions
We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.

We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in

these issues but they should not be a key FSANZ focus.

Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure. We recommend that the Food Ministers Meeting can request a review of a draft regulatory measure if it decides that FSANZ did not adequately consider one of its objectives or factors to which it must have regard, including Ministerial policy guidelines. The Act should also include clear procedural steps that must be met, including that the Food Ministers' should explain how it decided FSANZ failed to properly consider its objectives and factors to which they must have regard.

Costs and benefits of Component 1
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and regulatory impact considerations and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

We recommend that FSANZ adopts a definition of sustainability that considers health, social, environmental and ecological impacts both now and into the future. This must be designed so that protection of current and future public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Economic sustainability must be considered within a public health framework, meaning that industry profits are not prioritised as an economic benefit over the likely costs to individuals and governments due to overweight, obesity and preventable diet-related disease.

Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, such as using sustainability claims as a marketing tactic for those products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability must not be permitted.

Sustainable diets protect the climate, ecosystems and biodiversity while also ensuring food security and culturally acceptable, accessible, affordable nutrition for human health. Economic and population growth are expected to increase greenhouse gas intensive diets. Diets that are consistent with recommendations for good health are also likely to have lower environmental impacts compared to the current Australian diet, since they encourage plant foods; limit animal foods and energy dense, nutrient poor foods; and recommend energy balance.

Current diets and food systems contribute to global warming and environmental degradation leading to climate change; oil, water and nutrient scarcity; land degradation; food insecurity; food waste; and biodiversity loss. The global food system is failing to meet nutritional needs and is increasing pressure on planetary health. At the current rate of consumption, studies suggest there will need to be 70-100% more food by 2050.

There is a growing recognition of the need for policies and practices that foster ecologically sustainable production and consumption of food. Two complementary approaches are required. The first is to change consumer demand for a more environmentally sustainable food supply. The second is to work with primary producers, the food industry and government to lead changes in the food system to make its processes and outputs ecologically sustainable. FSANZ and the Act have a key role to play in creating a food system that is ecologically and environmentally sustainable.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

We do not have the expertise to comment on this question.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

We support the inclusion of Indigenous culture and expertise in the objectives of the Act. 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 people, not only limited to the introduction of new food products.

We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander organisations in Australia, and Maori organisations in New

Zealand.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

We do not have the expertise to comment on this question.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for Australian governments, through increased health expenditure.

We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto Australian consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines
We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals
In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:
• Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
• While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
• We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting
We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

It is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways
Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states “often have system-wide impacts” (p36) and “arguably has a wider reaching benefit for the broader Australian and New Zealand public” (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks
We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that Australia should be aiming for. In many cases Australia will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the Australian context.

We note that in addition to an ‘automatic adoption’ approach, the RIS proposes a ‘minimal checks’ pathway, where FSANZ will ‘….undertake minimal assessments of the suitability of the standards within the Australian-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.’ It is difficult to fully assess this without detail of what these ‘minimal assessments’ will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the Australian context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways
We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry’s profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are ‘generally recognised as safe’ by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

We know from Australian experience with health claims that self-substantiation is not effective, and we must not allow its expansion.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers’ Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are only appropriate for information that explains how to implement food standards. Mandatory, government-led codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure all jurisdictions in the joint food regulatory system have oversight over these forms of food regulatory measures and to ensure there is universal adoption of them by industry so there is equity across businesses and industries.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We support the Obesity Policy Coalition's submission, as detailed below.

We do not have this data, but we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs over and above this process should be considered as part of this RIS analysis of administrative burden.

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in Australia. Adopting international risk assessments risks lowering the standard of protection in Australia, resulting in Australia falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must protect health and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no detailed analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including health claims. We do not accept the view that rules around health claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards and concentrate additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.
We support FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

We ask that the RIS incorporate a specific public health and consumer review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection and in providing consumers with adequate information. This must include review of existing standards and the capacity to introduce new standards. This process must require FSANZ to consider long-term health outcomes, and how food regulation can improve diets, reduce overweight and obesity and prevent diet-related disease. The process must also recognise the resource constraints of public health organisations and enable evidence review by FSANZ. This review process should be resourced separately to industry applications and should be subject to reasonable time limits.

The review process outlined in the RIS appears to have a significant focus on reducing regulatory burden for the food industry. This system is unlikely to achieve best practice public health outcomes, as there is often an inherent conflict between effective, evidence-based public health measures and a goal to minimise regulation. To effectively protect public health, the Act must include a specific review pathway that is focused only on public health outcomes.

Expanding FSANZ's food safety role: coordinating food safety research, acting as a guardian of food safety databases and collating and creating consumer-facing food safety education materials

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.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

FSANZ and Food Ministers joint agenda setting

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts

We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring, and research. Having a centralized database would ensure independence, consistency and sustainability of ongoing monitoring efforts (e.g. Healthy Food Partnership targets). If a fee-for-service is established for this it should take an equitable approach, ensuring that public health or consumer organisations researchers and advocates can access the data without charge or at a significantly reduced cost.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

If FSANZ is given a function to create a data bank, access to this data must be without charge, or at minimal cost, to public health researchers and public health and consumer organisations, for work that is in the public interest, for public benefit and be publicly reported. These organisations do not have adequate resources to access data sources and are unlikely to receive a financial benefit through access.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

We do not support this component.

Changing FSANZ Board arrangements
We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills-based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions
We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label, this ensures there is immediate access to this information at the point of purchase and equal access to the information for all consumers.

New cost-recovery mechanisms for industry-initiated work
We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

The combination of reforms in Option 2 prioritise the profits of the processed food industry, while placing the burden of risk, both from a health and economic perspective on individual Australian consumers and on Australia's health system.

The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving its primary objectives of protecting public health, specifically supporting long-term population health and preventing diet-related disease, and the provision of adequate information to enable consumers to make informed choices.

Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform. This means that all risks to consumers and public health that we outlined in relation to option 1 (see response to question 9) also apply in relation to option 2, to an even greater extent.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

Yes, these are largely similar to those we identified in relation to Option 1 (see response to question 7). The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments, but also by industry.

This analysis must include:
• The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. 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, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
• 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. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.
• The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
• The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers.
• The economic costs borne by industry for losses in productivity, sick leave and staff turn-over as a result of preventable diet-related diseases.

Costs and benefits of Component 1
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

We support the Obesity Policy Coalition's submission, as detailed below.

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have 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 RIS 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 RIS 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 RIS 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.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective,

protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not delay proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.

The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We regularly engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that disproportionately benefit large food companies with significant resources to engage and advocate for changes in their interests.

The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations, must enable evidence review by FSANZ, and be subject to reasonable time limits.

As an organisation, there barriers to responding to consultations due to:
• Short deadlines comparative to size of consultation papers.
• Survey questions targeted to industry and difficult to respond to from a public health perspective (eg quantifying costs and benefits).

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

We support the Obesity Policy Coalition’s submission, as detailed below.

No, the pathways are all industry focused and don’t allow for public health engagement. The options for reform in this RIS would make it more difficult for public

health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the Food Standards Code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

Extending FSANZ's functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the States or Territories or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We disagree with the statement in the RIS that there is a 'net positive benefit' to component 1. The cost/benefit assessment for component 1 is not comprehensive. It does not assess the impact of reassigning FSANZ's resourcing into an area where there is no current need for FSANZ to take a role. FSANZ is currently under resourced to deliver its current remit and given the prioritisation of applications this has a negative outcome for proposals, giving FSANZ an additional role will further exacerbate this.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

GLOBE does not have any data on costs of a food incident or recall. Regardless, we reiterate that consumer safety and public health should be prioritised over commercial interests.

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

GLOBE do not think it would be valuable to Australia for FSANZ to coordinate food recalls or incident response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

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. However, some elements of this component go much further than this and we do not support these.

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.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards
We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.

Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in ensuring businesses are complying with standards. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine
We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister. This power should sit with a broader group that could consider categories of food/medicine in a more fulsome manner.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

N/A

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

N/A

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We support the Obesity Policy Coalition's submission, as detailed below.

We do not support FSANZ having a limited enforcement role or being either the bi-national or Australia-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner and could address differences in interpretation and action by the different jurisdictions, streamline the process, and reduce inequities, for food companies and increase consumer confidence in the system. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

We disagree with the statement in the RIS that there is a 'net positive benefit' to component 3. The cost/benefit assessment for component 3 is not comprehensive. It does not assess the costs/benefits in alternative avenues for ensuring consistency in enforcement across the States and Territories, nor the cost to public health of FSANZ's resourcing being deferred into the enforcement space. FSANZ is currently under resourced to deliver its current remit and given the prioritisation of applications this has a negative outcome for proposals, giving FSANZ an additional role will further exacerbate this.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No. However we would reiterate that when considering costs and resources, consumer safety and public health should be prioritised over cost-saving efforts.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We support the Obesity Policy Coalition's submission, as detailed below.

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18 of the Act, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

We also do not support the extension of FSANZ's role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

The draft RIS states that this component 4 could create new economic opportunities for businesses. Creating new economic opportunities is not and should not be the focus of amendments to a food regulatory system which has an overarching objective of protecting public health.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

Yes, the cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further de-prioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

This analysis must include:
- The costs (both in terms of consumer health and economic costs) of even further delays in progressing food regulatory measures designed to promote public health.
- The economic costs to consumers and governments, as well as industry, of poor health outcomes that are not addressed by public health food regulatory measures.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

No. The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of Australians. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective 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. Policy approaches that would address this policy problem include, but are not limited to:
• Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
• Giving FSANZ the resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health.
• Create a delineation within FSANZ for its two main work streams (applications and proposals). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
• Set statutory maximum timeframes for proposals that are consistent with the timeframes for applications.
• Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.
• Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

None. We do not think any of the components of Option 2 or 3 should be pursued, and certainly not prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 47).

We strongly support reform to improve the food regulatory system, but this must be done in a way that better protects long-term public health. The FSANZ Act review must be refocused to put public health first. This must include an independent review to fully assess the impact on long-term public health of all proposed options, including the health and economic costs and benefits to consumers and governments. The draft RIS must be amended to incorporate the policy problems listed above, the findings of this independent review and to identify additional reforms to address long-term public health.

The priority should be aligning the FSANZ Act and review with the Aspirations for the Food Regulatory System. Priorities should include:
• Clearly defining public health to include short and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised.
• Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
• Resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health.
• Setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work.
• Removing inconsistencies in interpretation and enforcement between jurisdictions. This could be done without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law.
• Reviewing the health claims system as a whole, to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

We support the Obesity Policy Coalition's submission, as detailed below.

No. None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:
• Include an additional aim the ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/New Zealand for all Australians/New Zealanders.
• Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.
• Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

Analysis of RIS Options against Vision and Aims of the draft Aspirations for the Food Regulatory System

Analysis of the VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.
• Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting Australians from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
• Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
o reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;
o remove safeguards resulting in less focus on improving and protecting safety;
o elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
o fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;

o fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.
• Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:
o centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
o focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

Analysis of Aim 1: to protect the health and safety of consumers by reducing risks related to food
As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.

• Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect to the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
• Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
• Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

Analysis of Aim 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.
• Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

Analysis of Aim 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues
• Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals “often have system-wide impacts” (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
• Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

Analysis of Aim 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand
• Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all Australian governments.
• Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will however, result in an even greater economic burden from chronic disease on both consumers themselves and all Australian governments and will have increasingly damaging impacts on health and environmental sustainability.
• Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the immense economic burden of chronic disease on consumers themselves and all Australian governments.

Supplementary information

50 If you wish to provide any supplementary information or comments, you may write them in the text box or use 'choose file' to upload a word or PDF document.

Please provide any supplementary information in the box below. Alternatively, you may upload any supplementary information by selecting 'choose file' below.:

Upload any supplementary information here. :
No file uploaded

AUSTRALIAN CHRONIC DISEASE PREVENTION ALLIANCE

FoodRegulationModernisation@health.gov.au

1 June 2021

Dear Sir or Madam

Re: FSANZ Act draft Regulatory Impact Statement

I write to you on behalf of the Australian Chronic Disease Prevention Alliance (ACDPA) to express our concerns with the FSANZ Act draft Regulatory Impact Statement and our recommendation for a separate review that takes into account the health costs of food regulation and food policy.

The current draft Regulatory Impact Statement is inadequate and fails to consider the effects of the food system on the long-term health of Australians. By focusing exclusively on the commercial benefits and costs, the analysis neglects the role of the food system in the diets and health of Australians.

We strongly recommend that a separate independent review be commissioned to provide evidence and modelling on the health costs associated with food regulation and food policy, including in relation to the current and future burden of diet-related disease and overweight and obesity in Australia.

Chronic conditions are the leading cause of death in Australia. One in two Australians have a chronic condition and one in five Australians have multiple conditions. However, much chronic disease burden could be prevented by addressing modifiable risk factors, including overweight and obesity and unhealthy diets. Together, unhealthy diets account for:

- 62 percent of coronary heart disease burden
- 41 percent of type 2 diabetes burden
- 34 percent of stroke burden
- 22 percent of bowel cancer burden
- 9 percent of chronic kidney disease burden.[1]

Unhealthy diets also contribute to overweight and obesity, which is an independent risk factor for chronic disease. Two in three Australian adults are overweight or obese and one in four children are overweight or obese.

Poor diet is a significant public health issue linked to our food system today, and the role of the food system in influencing what Australians eat should not be excluded from analysis informing food regulation reform.

The draft Regulatory Impact System is also inconsistent with the draft Aspirations for the Food Regulatory System, which clearly articulated poor nutrition and obesity as significant challenges facing the food system. The draft Aspirations document included objectives to:

- *'support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues'*
- *'enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled'.*

Any proposed reforms to the food regulatory system should be consistent in addressing existing and future effects on public health. The draft Regulatory Impact Statement must be revised to create a world-leading food regulatory system that promotes and supports the long-term health and wellbeing of Australians.

We note there are strong concerns raised by many public health, academic and consumer groups regarding the draft Regulatory Impact Statement and we support the intent of responses by our members, including Cancer Council Australia and Heart Foundation.

Please integrate our response into analysis from the public consultation, and we would be happy to discuss further if required.

ACDPA | Tel: [redacted] | GPO Box 4708, Sydney NSW 2001 | [redacted]

Yours sincerely

[redacted]

Sharon McGowan
Chair, Australian Chronic Disease Prevention Alliance
CEO, Stroke Foundation

About the Australian Chronic Disease Prevention Alliance

The Australian Chronic Disease Prevention Alliance (ACDPA) is an alliance of Cancer Council Australia, Diabetes Australia, National Heart Foundation of Australia, Kidney Health Australia, and Stroke Foundation. Members work together to collectively promote prevention, integrated risk assessment, early detection, and effective management of chronic disease risk. www.acdpa.org.au

[1] AIHW 2020. Australian Burden of Disease Study 2015: Interactive data on risk factor burden. https://www.aihw.gov.au/reports/burden-of-disease/interactive-data-risk-factor-burden/contents/dietary-risk-factors

VICTORIAN GOVERNMENT RESPONSE TO

Modernising the Food Standards Australia New Zealand (FSANZ) ACT: DRAFT REGULATORY IMPACT STATEMENT

June 2021

Executive Summary/Overarching position:

The Victorian Government considers the bi-national food regulation system to be an effective system that has ensured both a high standard of health and safety and an international reputation for high quality Australian food products over time. The system includes complex interplay of stakeholders where jurisdictional ministers are the decision-makers and risk managers of food policies and standards that are implemented and enforced by relevant state and territory regulatory agencies. Stakeholders largely agree the system has stood the test of time. However, system improvements and greater efficiencies and responsiveness within Food Standards Australia New Zealand (FSANZ) and the broader food regulatory system can be achieved. The Victorian Government recognises that reforms may also equip the food regulatory system to address the significant opportunities and challenges facing Australia and New Zealand over the next 20 years including climate change and its impacts on foodborne illness, changing consumer expectations, new technologies, growing obesity and diet-related chronic disease rates, challenges to international trade relationships and regulatory burden on producers and manufacturers.

The coordination of reforms to the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) and those under development for the broader food regulatory system is essential. These reforms require continued engagement with government jurisdictions, given the significance of changes being considered. FSANZ must be aligned with system-wide modernisation reform efforts, and changes to the FSANZ Act must be transparent and cognisant of the role of jurisdictional ministers in the food regulatory system.

The Victorian Government considers that the primary objective of the food regulatory system and FSANZ is the protection of public health and safety, and any changes to FSANZ and its Act must ensure this primary goal continues to be met. FSANZ is the key national body responsible for developing food standards, where this function is essential to support a strong and vibrant food sector and the protection of public health from risks associated with food. Reforming FSANZ and the FSANZ Act can enable the bi-national food regulatory system to be positioned as a more modern, agile, and responsive system, with the protection of public health and safety at the forefront of decision-making. However, FSANZ's independence as a scientific organisation and standards development body must be maintained and strengthened to navigate the inherent tensions between health and economic drivers of the food policy landscape. Clear separation of powers and lines of accountability between FSANZ and members of the Food Ministers' Meeting ensures the ongoing integrity of decisions taken by the Food Ministers' Meeting, which replaces parliamentary process in adopting food laws into members' jurisdictions. While food-related issues are broad, FSANZ's remit should focus on delivering its statutory functions efficiently and effectively, where its role as risk assessors is central to the operation of the food regulatory system. New roles and functions should be adopted only where they support these central functions.

The *Draft Regulatory Impact Statement* (Draft RIS) identifies three broad policy problems to be addressed in reviewing the FSANZ Act:

1. In its current form, the Act does not support efficient and effective regulation, and is burdensome to administer.
    a. The objectives and current functions of FSANZ are not clear
    b. Legislated processes and decision-making arrangements for food standards are cumbersome and inflexible

c. Elements of FSANZ's operations are inefficient

2. Legislation does not enable a strong, resilient and agile food regulatory system
    a. Statutory timeframes and resourcing constraints within FSANZ reinforce a piecemeal and reactive regulatory focus
    b. Food safety and quality no longer guarantee a competitive advantage for Australian and New Zealand food businesses
    c. There is limited collaboration and integration of effort across the regulatory system

3. Current arrangements undermine the powers of a single joint food system
    a. FSANZ is limited in its power to assist in food incidents and food recalls
    b. Inconsistent interpretation and enforcement
    c. FSANZ has no legislative remit to extend Australia and New Zealand's influence on the international stage.

The Victorian Government supports some aspects of the three policy problems but does not agree with all of the problems (particularly Problem 3), the proposed actions, nor that all of these issues should be addressed through the FSANZ Act Review. While legislative amendment may be necessary to address some of the key policy problems, other actions rely on business or system improvements to support a strong, resilient and agile food regulatory system. Victoria considers that the Draft RIS would benefit from prioritisation of the multiple proposed actions to address each problem and consideration of which action could best address the problem, the cost implications of implementing an action and the implications for other FSANZ functions.

The Victorian Government considers the following actions are the key priorities that need to be achieved through the FSANZ Act Review to address current inefficiencies with FSANZ and enable it to contribute to an effective food regulatory system:

Clarify and uphold roles of system actors:

1. Clarify the role of FSANZ and support the organisation as an independent scientific body, risk assessor and administrator of standards. Through legislative review, FSANZ's role as an independent scientific body for food standards in Australia with core functions that allow FSANZ to conduct risk assessments and provide authoritative scientific information on food matters should be recognised.
2. Maintain separation in decision making between the risk assessor (FSANZ) and risk managers (the Food Ministers' Meeting) to provide for the ongoing integrity of the system while clarifying and continuing the role ministers play in directing FSANZ and food standards.

Clarify goals and objectives of FSANZ / FSANZ Act:

3. Provide greater recognition, clarity and focus on the objectives and functions of FSANZ where protecting public health and safety is the overarching priority of FSANZ and the food regulatory system.
4. Clarify the goals of FSANZ and its objectives in developing or reviewing food regulatory measures to support achievement of goals of economic importance to Australia and New Zealand (including an efficient and internationally competitive food industry), where the protection of public health and safety is first met.

5. Include provisions in the Act to ensure ministerial policy guidance is considered alongside the relevant objectives of the Act. There are different interpretations of the level of regard given to objectives addressed in s18 (2). In particular, the level of regard afforded to policy guidelines agreed by the Food Ministers' Meeting that set expectations for (mostly) the protection of public health and safety.

Improved functions, prioritisation and utilisation of regulatory measures:

6. Provide FSANZ with a clear legislated authority and obligation to maintain the currency of food standards, supported by a regular review process, that ensures clarity in the interaction between standards. This allows timely resolution of recognised issues with standards and policy issues (currently identified in Proposals) to ensure the benefits of the Food Standards Code are realised by all stakeholders.
7. Improve prioritisation of FSANZ's workplan, in agreement with the strategic priorities of the Food Ministers' Meeting, to ensure benefits of a modern, responsive and agile standards development body are realised by all stakeholders of the food regulatory system.
8. Improve processes and use of regulatory and non-regulatory tools to meet the needs of all stakeholders. These processes include improved drafting of standards (potentially through the use of parliamentary drafters or equivalents), use of guidelines and re-introduction of explanatory notes for standards, both of which will address current interpretation issues and facilitate compliance.

Appropriate resourcing

9. Provide appropriate resourcing of FSANZ to enable its statutory obligations and functions to be met; enabling scientific integrity and competency to position FSANZ as a peak standards-development body on the international stage.

Other actions proposed in the Draft RIS may add to the functioning of FSANZ, however Victoria considers the above issues are priorities for improving its legislative basis, function and operation. Detailed consideration of the proposed options, components and actions and their impact on FSANZ and the food regulatory system are provided in the submission below. A summary of supported reform proposals is provided in Appendix 1.

The Victorian Government looks forward to providing further input into the FSANZ Act Review as it progresses.

Detailed response

Response to Option 1 | Retain the status quo

The Victorian Government considers that Option 1, retain the status quo, would be a missed opportunity to make improvements to FSANZ and the *FSANZ Act* noting many improvements could be achieved without legislative change. With ministerial endorsement to modernise the bi-national food regulatory system, now is the opportune time to review the *FSANZ Act* to ensure alignment with broader reforms being considered through the ambitious reform agenda and equip the standards development body to deal with future challenges in a more effective way.

Response to Option 2 | Modernise the Act to make it agile, resilient and fit-for-purpose

Response to Option 2, Component 1 | Clarify objectives and functions and reflect these into the Act

"Objectives and goals are covered in a number of sections of the Act. The overarching object of the Act and goals for FSANZ are set out in s 3, while s 18 discusses the objectives when developing or varying food regulatory measures" (p. 50) "Small changes to the objectives may remove ambiguity and create a clear set of legislated priorities" (p. 51)

The Victorian Government considers that the current goals and prioritised objectives in s3 and s18 of the Act are clear. However the fact that they are spread across multiple sections of the Act, together with the unclear status of the secondary objectives in s18(2) that FSANZ 'must have regard to', does create problems in the development of standards. This is particularly the case for ministerial policy guidance, which is referenced under s18(2)(e) and the desirability of an efficient and internationally competitive food industry (s18 (2)(c)).

Currently, while most of the ministerial policy guidelines set expectations for how the protection of public health and safety should be considered in the regulation of certain foods, these appear to be taken to be optional principles that FSANZ must only 'have regard to'. Where ministers have agreed policy guidance, this should be considered as part of the prioritised objectives, such as the protection of public health and safety. This would better reflect FSANZ's role in developing standards in a regulatory system that bypasses parliamentary consideration in jurisdictions. The Draft RIS does not address or offer solutions to this key issue.

Any changes to the goals and objectives of the Act should:

- Reflect and provide interoperability with the Food Regulation Agreement (currently under review)
- Clearly articulate that FSANZ is an independent scientific body, risk assessor and standards development body; with clear delineation between the risk assessor (FSANZ) and risk managers (the Food Ministers' Meeting)
- Clearly prioritise the protection of public health and safety (both acute and long term) as the primary objective of FSANZ
- Clarify that ministerial policy guidance should be considered as part of the prioritised objectives (such as the protection of public health and safety) rather than something separate to 'have regard to'

- Continue to ensure the provision of information to allow consumers to make informed choices where relevant to public health and safety and the prevention of misleading and deceptive conduct
- Include an objective that recognises the economic importance of the food sector to Australia and New Zealand, but that it is subordinate to the protection of public health and safety.

Action: Aligning wording around public health protection across s3 and s18 (of the Act)

"Current references to safety and public health protection are not consistent between s3 and s18. The former refers to "a high standard of public health protection" while the latter states that FSANZ's primary objective in developing standards is "the protection of public health and safety". These sections could be brought into alignment by broadening s3 to state "a high standard of *safety and* public health protection." (p. 51)

The Victorian Government supports the proposed alignment of the wording between s3 and s18 of the Act where s3 is amended to 'a high standard of safety and public health protection'. Victoria also supports using the *Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures* as the definition for 'safety and public health protection' in the Act. This will provide greater clarity to the scope of FSANZ's objectives, specifically in varying food regulatory measures. The definition is: '*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'*

Action: Expanding the objectives of FSANZ to recognise trade as a core goal

"Section 3 could be amended to include "an efficient and internationally competitive food industry" and specify that this trade objective is subordinate to public health and safety objectives. In addition, "the regulatory impact on industry, particularly small businesses" should be included as a factor FSANZ must have regard to in s18(2). These additions will provide a greater impetus for FSANZ to support industry and innovation while not detracting from the overarching goal of promoting public health and safety." (p. 51)

The Victorian Government recognises the importance of the food sector, including small businesses, to both Australia and New Zealand and considers that this should be reflected in the Act. In s3, *Object and Goals* is currently silent on trade and "an efficient and internationally competitive food industry" is only referenced in secondary objectives that FSANZ must 'have regard to'. Victoria agrees that the protection of public health and safety must remain the first priority.

Further consideration is required of the best way to reflect the importance of the food sector in the Act and the scope and definition of trade (i.e. a competitive food industry, fair practices, market access and/or trade), while ensuring the protection of public health and safety remains the priority. Currently, s3 includes the object of the Act and non-prioritised goals. Inclusion of trade within these non-prioritised goals raises questions about how a core goal related to trade would remain 'subordinate to public health and safety objectives'.

Victoria seeks further clarification on how elevating 'an efficient and internationally competitive food industry' from the secondary objectives to the goals or primary objectives would be applied to decision making by FSANZ. It is also unclear how a new trade goal or objective would sit relative to current prioritised objectives under s18(1) which include: 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. It is important that competing objectives do not adversely impact the

inclusion of information deemed necessary to support public health and safety on Australian products and protection against deceptive conduct.

Action: Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review

"The Act could be amended to legislate criteria that the Food Ministers' Meeting must meet to request a review, where these criteria could harmonise with the factors that currently guide FSANZ's assessment process, as set out in s18. For example, criteria to request a review might involve specifying how ministerial guidelines have not been considered in FSANZ's deliberations." (p. 51)

The Victorian Government does not support the FSANZ Act providing the mechanism for ministers to request a review of draft standards or the criteria the Food Ministers' Meeting must meet to request a review of a draft regulatory measure. The FSANZ Act should acknowledge that minsters may request reviews of draft standards, but the details of this decision, such as criteria, should remain in the intergovernmental Food Regulation Agreement.

Action: Expanding objectives of FSANZ to address important priority of food sustainability

"FSANZ's objectives are currently mute on the issues of food sustainability. This leaves FSANZ no levers to consider sustainability issues when developing or reviewing food regulatory measures. Consideration of food sustainability is also critical for the joint Australia-New Zealand food standards system to keep pace with the international market, as trading partners are beginning to expect evidence of food sustainability on exports." (p. 26)

The draft RIS provides limited rationale for expanding the objectives of FSANZ to address food sustainability beyond trends in the international regulatory landscape.

The Victorian Government holds concerns that any expansion of FSANZ objectives to address food sustainability will exacerbate deficiencies in delivering its current objectives and functions. FSANZ has limited existing capability to appropriately deal with this new objective and has indicated current resourcing is not sufficient to support existing objectives.

While the inclusion of an objective for FSANZ in the complex area of food sustainability is not supported, contributions to and intelligence gathering from the growing international focus on the One Health approach may be useful. The One Health approach recognises that environmental factors, including chemical contaminants in animals and animal products, residues of veterinary drugs and plant protection products may have implications for human health (and that of animals, plants and the environment). There is a need for transdisciplinary collaboration on all aspects of health for people, animals and the environment. Instead of a specific objective around food sustainability, it would be preferable for provisions to be made for FSANZ to be able to collaborate with relevant agencies and consider the impacts on food and the protection of public health and safety of One Health (and other relevant) concepts and developments over time.

Action: Recognition of indigenous culture and expertise

The Victorian Government welcomes further consideration on how Indigenous culture and expertise are appropriately recognised in legislation. Victoria considers there is scope to recognise Indigenous culture and expertise within the Food Standards Code. Currently, Indigenous foods are considered by the FSANZ Advisory Committee for Novel Foods who refer to relevant local Indigenous community leaders to assess traditional or novel use. This function could be enhanced through the creation of a dedicated Indigenous Advisory Committee for native / Indigenous foods. As the draft RIS explains (p. 27), further consideration of the definition of 'traditional', defined in Standard 1.1.2 -

8 of the Food Standards Code, could support further recognition of traditional foods and food production techniques of Indigenous culture in Australia.

Action: The Act could be amended to ensure that FSANZ has the breadth of statutory functions required to effectively deliver on its objectives

> "FSANZ's statutory functions could be updated to align with any changes to the regulatory objectives of the Act. This could better reflect FSANZ's current work as it relates to both acute food safety and longer-term population health objectives. This could provide greater clarity about FSANZ's core reasons for being and transparency about the activities on which FSANZ should be focusing effort.
>
> This improvement could be achieved by adding a range of additional statutory functions to include work that is currently undertaken but is not explicitly captured by existing functions, such as establishing a statutory function relating to food fraud and food crime." (p. 52)

The Victorian Government supports the intent to align FSANZ's statutory functions with its objectives.

Victoria recommends these be drafted as 'functional areas' rather than processed based functions to enable FSANZ to be flexible and agile in the way it meets the functions and objectives of the bi-national system. For example, drafting could clarify FSANZ's function:

- to maintain the relevance of food standards so that they can effectively contribute to minimising risks associated with food. Adequate standards for traceability and labelling would clearly be within FSANZ's remit and would also contribute to reducing public health and safety risks associated with food fraud and food crime.
- to undertake risk assessments for the purposes of protecting public health and safety in relation to food. This would enable FSANZ to provide advice on matters beyond food standards where relevant and necessary.
- to provide scientific advice on food-related issues. This could include identifying research needs and coordinating research efforts, where this is relevant to the needs of the bi-national food regulatory system. It may also include an expectation that FSANZ will publish all its scientific advice, providing a repository of food safety information.

Response to Option 2, Component 2 | facilitate risk-based approaches to developing or amending food regulatory measures

Action: better use of FSANZ's other regulatory instruments could increase the system's agility and responsivity to change

> "FSANZ has several different regulatory instruments to achieve its objectives. The Act allows FSANZ to develop food regulatory measures which comprise food standards and codes of practice. FSANZ can also develop guidelines to assist interpretation of the Food Standards Code on its own initiative or in consultation with the Australian States and territories and other bodies (s 13(c))." (p. 33)
>
> "One of the potential barriers to using codes of practice in the past has been that they are translated into law at a jurisdictional level but are not subject to the FMM endorsement, in the way that food standards are." (p. 33)

The draft RIS acknowledges that currently, FSANZ almost exclusively uses food standards as a legislative instrument while the Act provides for several regulatory measures.

The Victorian Government supports in principle FSANZ's use of other regulatory instruments provided it does not result in a system with greater complexity (that is, multiple instruments that

need to be considered by industry and regulators), the bypassing of ministerial approval, or situations where regulators are unable to take appropriate enforcement action.

Support for the use of different regulatory instruments will depend on the problem intended to be solved. For example, Victoria supports greater use of guidelines, statements of intent (and the use of parliamentary drafters or equivalents) to assist in consistency of interpretation and implementation of the standards by industry. Coordination of the guidelines' development process with the standards development process may also improve drafting of standards, providing both internal and external stakeholders clarity on the intent of the standard. In this context, introducing codes of practice that assist industry to implement outcomes-based standards, could be useful.

However, Victoria does not support the use of codes of practice as an alternative standalone regulatory tool in place of standards because these are not ratified by the Food Ministers' Meeting and would need to be adopted through separate legislative processes in jurisdictions to be enforceable. Codes of practice bypass ministerial approval and provide little oversight of risk, reducing FSANZ's ability to uphold its objective to protect of public health and safety. An example demonstrating concerns with standalone codes of practice is the Code of Practice on Nutrient Claims, which was not consistent with dietary advice on nutrients, was misused, unenforceable and eventually replaced with regulation.

Action: implementing a decision-making tool may lead to better uptake of the full suite of instruments available to FSANZ

The Victorian Government supports the development of a resource to guide decisions about the instrument that can most appropriately deal with a defined problem. However, the draft indicative risk framework provided on page 53 is not a risk framework but more accurately, an 'assessment framework' given some criterion are unrelated to risk. The Victorian Guide to Regulation[1] may be a useful framework in identifying a suitable regulatory or non-regulatory approach. This may intersect with the food policy development framework[2] to enable consideration of the full suite of regulatory tools.

Victoria notes both actions under Option 2, Component 2 addressed above do not require legislative change and could be implemented under the existing provisions of the Act. A clear risk or assessment framework would be helpful to all stakeholders to provide certainty and transparency in considering applications and proposals to vary the Food Standards Code.

Action: Decision-making arrangements could allow for delegation by the FSANZ Board and Food Ministers' Meeting

The Victorian Government notes that the draft RIS proposes removing or revising the FSANZ Board's non-delegable duties (set out in s150) to delegate decision-making responsibilities for draft standards or variations to the CEO. This appears to undermine the intention of having a skills-based board. If this delegation proposal is intending to avoid delays in Board decisions, other mechanisms might be preferable such as out-of-session considerations and the use of virtual meetings.

Victoria also considers that separation of the standards development process from regulatory decision making is essential to maintain the integrity of FSANZ as an independent scientific body and

[1] Victorian Department of Treasury and Finance, Victorian Guide to Regulation - A handbook for policy-makers in Victoria, 2016 https://www.vic.gov.au/sites/default/files/2019-10/Victorian-Guide-to-Regulation.pdf

[2] https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Food-policy-framework#:~:text=The%20Food%20Regulation%20Policy%20Framework%20(as%20shown%20in%20the%20flowchart,appropriate%20policy%20response%20is%20applied.

ensure oversight of legislative changes to food laws. Delegated decision-making from the Food Ministers' Meeting to FSANZ does not appear to support FSANZ's independence and appropriate separation of powers.

The Draft RIS also proposes:

> "that members of the Food Ministers' Meeting could be given the explicit ability to delegate decision-making to ratify changes to food standards to particular Department officials, thereby preserving each jurisdiction's role in having a 'final say' about new or amended food standards, while recognising that particular Ministers may not feel necessary to have oversight and decision-making authority on all changes to the standards." (p. 54)

The Victorian Government supports in principle delegation on a case-by-case basis, at the discretion of each jurisdiction's Food Ministers' Meeting lead minister, where the lead minister, or relevant delegate, must present a whole of government view (Part III of the Food Regulation Agreement). While this option may improve efficiencies during the Food Ministers' Meeting to allow for a greater focus on strategic matters, Victoria notes that regular/frequent delegation could risk undermining ministerial decision making that replaces parliamentary consideration and ministers could lose visibility of the system and it changes. Victoria further notes that the ability to delegate to departmental officials could also be achieved through the Food Regulation Agreement and should be reflected in a revised Agreement where this proposal is adopted in the FSANZ Act.

Action: The Act could provide for FSANZ to accept risk assessments from overseas jurisdictions

> " In consultations to date, industry stakeholders spoke about the administrative burden associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ. The burden could be minimised if FSANZ had the statutory ability to recognise and adopt international risk assessments." (p. 54)

The Victorian Government agrees that the option for FSANZ to accept certain overseas risk assessments warrants further exploration – provided there would remain a requirement for FSANZ to conduct strict verification and assessment of local characteristics and ministerial policy. Recognition of international risk or safety assessments may be a useful mechanism to streamline application processes. The collaborative approach taken for genetically modified foods between Health Canada and FSANZ is based on a thorough comparison of operating and approval processes between each organisation. It includes assessment in the Australia/New Zealand context and may be a useful model for FSANZ for other food safety assessments. With strict verification and assessment of local characteristics, adoption of risk assessment from overseas jurisdictions provides efficiencies. It is noted this process is already possible under the current provisions of the FSANZ Act.

Action: The creation of new pathways could expedite low-risk amendments to food standards

> "Two new pathways could be introduced to leverage the international evidence base:
> - Automatic adoption of new standards from select international regulatory systems.
> - Minimal check pathway. This option would provide FSANZ a pathway to expedite consideration of standards that have been approved by a comparable overseas regulator
>
> These pathways could be subject to different decision-making arrangements than applications and proposals; for example, not requiring the Food Ministers' Meeting's ratification of these changes (and instead providing for FSANZ to be the final decision maker). Alternatively, the Food Ministers' Meeting could undertake periodic, annual ratification of all changes made through these pathways." (p. 55)

The Victorian Government does not support automatic adoption of standards of other countries' food regulation bodies, however supports shortening regulatory pathways by considering overseas intelligence. The specific differences between the 'automatic adoption pathway' and the 'minimal check pathway' proposed in the draft RIS require further detail and clarification.

Victoria recommends further exploration of the approach taken for approval of certain genetically modified foods between FSANZ and Health Canada as a means to expedite consideration of certain standards approved by select international regulatory systems that have been verified and considered comparable to Australia and New Zealand. This may identify specific classes of standards and applications in scope for this pathway, where verification and assessment of Australian and New Zealand characteristics and policies are included, with ministerial ratification prior to adoption. This would ensure the ongoing separation of powers between the risk assessors and risk managers and the oversight of food laws by elected officials for each jurisdiction.

Action: an additional pathway to bring very low risk products to market could support greater economic opportunities for food businesses

The Victorian Government notes this pathway proposes the introduction of an industry self-substantiation pathway, which may be specific to very low-risk products such as certain food additives, where products are 'generally recognised as safe' by qualified experts. To support this pathway, the draft RIS outlines operational shifts including:

- FSANZ providing assistance to industry to understand the pathway and its evidentiary threshold requirements;
- Post-market monitoring and surveillance;
- FSANZ taking an educational role to support remedial action for non-compliance;
- FSANZ to advise jurisdictional enforcement agencies on further necessary intervention (p. 57).

> "It is noted that the specific proposal for the introduction of an industry self-substantiation has the potential of increasing the risk of food-borne illness or adverse health outcomes for the community if an unsafe food was able to enter the market. This could lead to impacts on consumer confidence and perception of the Australian and New Zealand food industry" (p90)

The Victorian Government does not support this proposed pathway and considers that the framework with Health Canada for genetically modified foods provides more efficiencies while protecting Australia's public health and reputation for safe food. The operational shifts proposed under this action could threaten FSANZ's independence and create opportunities for industry capture, or the perception of capture. This action also raises questions about who would determine the low risk nature of products under this pathway, noting that food additives are not universally low risk, which is the reason for their regulation. In addition, the post-market monitoring and surveillance required to support this proposed pathway will require increased resourcing and is unlikely to balance any savings generated by reducing the pre-market risk assessment. Victoria holds further concerns around the remedial action being proposed for non-compliance in creating an unlevel playing field for the compliance expectations of supposed low risk foods compared to other foods that would require pre-market assessment. In additional, the operational shifts create an enforcement role for FSANZ where this is the responsibility of jurisdictions, with clear legislative responsibilities to enforce the safety and suitability of food.

Response to Option 2, Component 3 | Build in flexibility to create bespoke regulatory sandboxes

"A regulatory sandbox generally refers to a regulatory "safe space" that creates an environment for businesses to test products with less risk of being "punished" by the regulator for non-compliance. In return, regulators require applicants to incorporate appropriate safeguards to insulate the market from risks of their innovative business. It typically involves a framework set up by a regulator to allow pilot testing of innovations by private firms in a controlled environment (e.g., exemptions, allowances, time-bound exceptions etc.) overseen by regulators." (p. 58)

A cost to consumers would be "Greater risk of adverse outcomes for consumers (e.g. short- and long-term health) where ingredients, products etc., are not subject to rigorous pre-market approval" (p. 96)

The Victorian Government does not support broad regulatory sandbox approaches endorsed/overseen by FSANZ that enable in-market testing of new products or processes across multiple jurisdictions but considers there may be merit in individual jurisdictions working with manufacturers to trial some innovations in food production in a 'limited regulatory sandbox' approach. Further exploration of this is required through the modernisation of the food regulatory system reform agenda.

Victoria is concerned that the regulatory sandbox approach as proposed sidelines safety assessments for a defined period, creating inconsistency with the Act's primary objective to protect public health and safety. It could result in jurisdictions having no control of the distribution, access and use of a novel product or new ingredient captured by a sandbox. It could also place unnecessary burden on health services and creates questions over legislative responsibilities by shifting the risk and liability onto the community and government. Recent examples of new products released onto the market with limited regulatory oversight include highly caffeinated products and sport supplements, which have resulted in health concerns and in some cases, deaths. These examples highlight the issues with industry's ability to adequately assess and manage the risks in the absence of pre-market risk assessments.

The need for in-market testing and a regulatory "safe space" may be reduced or removed through a legislative requirement to maintain the currency of the Code. One area where in-market testing may be appealing to food industry is novel foods, however, Victoria considers finalisation of Proposal P1024 Nutritive substances and novel foods could enable shorter pathways to market while upholding FSANZ's objective to protect public health and safety.

Response to Option 2, Component 4 | Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation

Action: Resourcing FSANZ to undertake more timely, holistic, and regular reviews of food standards.

The Victorian Government considers the administration of the Food Standards Code as one of the core functions of FSANZ and the failure to keep standards up to date as a key problem to address in the current review. Resourcing alone does not deal with the existing lack of legislative obligation to keep standards up-to-date and the barriers created by statutory timeframes and cost recovery mechanisms provided for applications.

The improvement of existing pathways to vary standards and functions of FSANZ may provide solutions to drive ongoing relevance of standards and a more systematic and strategic approach to their review. These solutions could include:

- Clarifying FSANZ's risk assessment role (in the FSANZ Act), whereby standards are regularly reviewed and issues addressed, may reduce the impetus on industry to submit applications for new permissions
- Addressing the inequitable approach to applications and proposals by inclusion of regular reviews of standards as a primary statutory function in addition to review of statutory timeframes for applications;
- Ensuring a strategic approach to FSANZ's workplan to enable assessment of applications within flexible timeframes and appropriate prioritisation of proposals or reviews of standards which reflect ministerial priorities, policies, or known regulatory issues;
- Providing FSANZ the ability to adjust timeframes and recognise work conducted within the food regulatory system (through the FRSC policy development framework) could generate efficiencies;
- Ensuring flexibility in the food standards development process that allows FSANZ to consider individual applications as part of existing proposals may enable regulation to be updated more efficiently and cohesively; and
- Expanding the approach used with Health Canada for genetically modified foods as explained above.

Action: Equipping FSANZ to coordinate food safety research across Australia and develop strategic relationships with New Zealand food safety research entities

"While there are many highly capable entities that generate food safety research and data, there is duplication of effort across the system and missed opportunity to harness the benefits from economies of scale. To this effect, FSANZ could be positioned to be the engine room of this system, with a clear legislative remit and appropriate resourcing to drive the collection, consolidation and communication of food safety or food composition data to facilitate intelligence-led decision making." (p. 59)

"Stakeholders have recognised FSANZ's expertise in food safety data and intelligence, but did not necessarily feel it was the natural choice to lead the sector moving forward" (p. 84)

FSANZ's current functions described in Section 13 Part 1 (g) and (h) of the Act enable FSANZ to coordinate food safety data and conduct research and surveys to support its work in the standards development process.

The Victorian Government supports the existing functions but does not support providing FSANZ with a new legislated function to coordinate food safety research across Australia. A formal research coordination function is resource intensive, requiring additional funding and staffing, and detracts from the Authority's core functions, with no clear benefit to the food regulatory system, particularly where other organisations perform these functions well.

Victoria views FSANZ's core role as an independent scientific body, risk assessor and administrator of standards, where relationships with research bodies are necessary to draw on their expertise and inform FSANZ's scientific evidence for standards development.

Victoria supports amendment to the functions described in the Act to enable FSANZ to draw on research from other organisations and conduct surveillance in support of its objectives. Rather than including new processes/tasks or prescriptive provisions for specific research activities, the FSANZ Act should better articulate the functional areas that FSANZ could most effectively contribute to. Minor amendment to the Act to allow FSANZ to undertake these functions independent of States and Territories where current drafting does not provide for FSANZ to undertake activities on its own initiative is recommended.

Action: Positioning FSANZ as the guardian of key food safety databases

This action proposes that FSANZ could assume a role as the custodian of a composition/nutrition/food safety database that is used for analysis of trends/emerging issues.

The Victorian Government notes that FSANZ already does this with the Australian Food Composition Database, which is used for dietary modelling for risk assessments, and the more recent Branded Food Composition Database to support the Health Star Rating calculator. As noted above, Victoria considers FSANZ's functions should enable FSANZ to give full effect to its statutory objectives, where the drafting of its functions provides the flexibility to achieve these objectives. The proposed approach to include specific, process-based legislative functions could limit FSANZ's ability to be flexible in achieving its objectives. Victoria supports functional areas that enable FSANZ to continue being the custodian of databases, to achieve its core role as an independent scientific body, risk assessor and administrator of standards. Victoria does not support the addition of new roles in this area, particularly without addition detail on the resourcing required for implementation.

Action: Providing for FSANZ to collate and create consumer-facing food safety education materials

The Victorian Government notes the Act currently provides for FSANZ to collate and create consumer facing food education materials under Section 13 part 1(i). Victoria supports amendment to the Act to allow FSANZ to undertake these functions independent of States and Territories where current drafting does not provide for FSANZ to undertake this function on its own initiative.

Victoria notes that a number of actions proposed in this component seek to provide new functions and roles for FSANZ, where in fact these functions already exist but are not currently fulfilled. FSANZ may be more likely to achieve its existing functions with appropriate resourcing. In addition, creating a functional area (rather than specific process-based functions) that relates to the provision of scientific information and guidance on standards and food-related issues would provide greater flexibility for FSANZ to provide a range of relevant information. This functional area should also include an expectation that FSANZ will publish all its scientific advice, providing a repository of food safety and standard information.

Response to Option 2, Component 5 | Foster new approaches to working with other agencies, with a focus on intelligence-sharing

Action: FSANZ and the Food Ministers' Meeting could undertake periodic joint agenda-setting to agree on the proposals on which to focus

"FSANZ and the Food Ministers' Meeting could implement routine joint priority setting mechanisms to regularly agree priorities, including both general strategic priorities and priority changes to food standards. This could, for instance, consist of annual planning where members of FSANZ and the Food Ministers' Meeting come together to agree on the proposals and other project work that will be progressed as part of FSANZ's workplan with a view to removing or abandoning lower priority items." (p. 60)

The Victorian Government supports in principle proposals that enable FSANZ and the Food Ministers' Meeting to undertake periodic joint agenda-setting to agree on high priority proposals. Arguably, processes of the Food Ministers' Meeting and the FSANZ Act currently allow for joint prioritisation of FSANZ's workplan. However, the current process requires significant improvement in order to better inform ministers of the implications of taking on new proposals or project work on the progress of existing commitments (i.e. reprioritisation). The current process does not provide a clear rationalisation or prioritisation framework, with a number of proposals in abeyance for several years. Victoria notes the ambitious reform agenda to modernise the food regulatory system, agreed by ministers in November 2019, will also consider how the Food Ministers' Meeting undertakes strategic agenda setting. FSANZ's interaction with the Food Ministers' Meeting in agenda setting may be more appropriately considered following the direction identified under this broader reform agenda.

Victoria notes the following statement in the draft RIS:

> "Joint priority setting might focus *solely* on the component of FSANZ's workplan with capacity allocated to proposals and project work – it should not displace the progress of applications, which are subject to statutory timeframes. " (p. 61)

The Victorian Government suggests that while the FSANZ Act includes statutory timeframes for applications (a request to change the Code by a business), a revised FSANZ Act should consider a flexible framework to enable these applications to be prioritised within the demands of FSANZ's workplan, which includes prioritisation alongside proposals (which seek to change the Code to address known issues or adoption of ministerial policy requests).

The current provisions of the FSANZ Act to deal with applications results in applications being prioritised over proposals. The system's resources are therefore focused on individual business applications to change the Code (usually requested by larger businesses), rather than supporting system-wide improvements with broader benefits to business, particularly small to medium enterprises, and other stakeholders. The current incentives to prioritise applications ahead of proposals means that the benefits of a responsive food regulation system are experienced by individual or a few food businesses rather than providing broader benefits for the sector, potentially disadvantaging small and medium enterprises. This is particularly relevant where FSANZ may have regard to "the regulatory impact on industry, particularly small businesses" as proposed in Option 2 Component 1. A continued diminished focus on proposals may mean that policy and regulatory issues remain unresolved while applications proceed without appropriate consideration of the broader impacts on the food regulation system.

Examples of the deprioritisation of Proposals that address long standing issues can be seen on FSANZ's Work Plan. Some examples with time elapsed since work commenced include:

- P1010 - Review of Formulated Supplementary Sports Foods – 20 years. Commenced with Proposal 236 in 2001, abandoned in 2013, then added back on the work plan in 2018; still to do initial assessment.
- P1024 – Revision of the Regulation of Nutritive Substances & Novel Foods – 9 years, on hold since 2017 due to other priorities.
- P1028 – Infant Formula – 9 years since FSANZ's first public consultation, still to release first call for submissions.

- P1047 – Review of regulatory nutrient reference values, to update the values from the 1991 recommended daily intakes to the values updated in 2006 – 11 years, put on hold until 2018 and nil action since; still to release first call for submissions.
- P1030 – Composition and labelling of electrolyte drinks – 7 years, on hold since 2014.
- P1049 - Carbohydrate and sugar claims on alcoholic beverages – 3 years, still to release first call for submissions.

Action: Earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards.

> "FSANZ could work alongside government stakeholders and provide its expertise at strategic points of time. This collaboration could support intelligence-led decisions in relation to policy agenda setting for the joint food standards system and supporting the joint food standards system to be more responsive and forward looking." (p. 61)

The Victorian Government notes it is unclear how this action would change the status quo given that FSANZ currently attends Food Regulation Standing Committee (FRSC) policy working groups to provide early advice on matters that could progress to regulation. Similarly, FSANZ currently engages with jurisdictions early in the standards development process to understand implementation issues and early stakeholder views through regular meetings. FSANZ can also utilise the Integrated Model Approach for Standards Development currently being used to progress P1052 PPP Requirements for Horticulture (Berries, Leafy Vegetables and Melons) and W1138 Review of Standard 4.2.5 Egg primary production and processing standard.

Victoria supports continued collaboration between FRSC and FSANZ and the provision of any intelligence by FSANZ, but question whether this collaboration requires legislative change. Victoria considers that clear roles and responsibilities of each party at different stages of the standards development process is necessary to minimise duplication and ensure due consideration of the information shared by each. There may be opportunity to develop up an operating procedure to support the Food Regulation Policy Development Framework[3] to articulate roles and responsibilities and the steps involved. Victoria notes the ambitious reform agenda to modernise the food regulatory system will consider improvements in the standards development process and the application of the Food Regulation Policy Development Framework. FSANZ's role in this process may be more appropriately considered following the direction identified under this broader reform agenda.

Action: Collaborating with jurisdictional enforcement agencies to identify emerging risks and activate appropriate regulatory response

> "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. 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." (p. 61)

The Victorian Government supports in principle improved collaboration between FSANZ and jurisdictional enforcement agencies to identify emerging risks and the activation of any necessary

[3] https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Food-policy-framework#:~:text=The%20Food%20Regulation%20Policy%20Framework%20(as%20shown%20in%20the%20flowchart,appropriate%20policy%20response%20is%20applied. Viewed 22 April 2021

regulatory response. However, there is a clear separation of responsibilities between jurisdictions and FSANZ regarding food safety risk management.

In Victoria, the Minister for Health and Minister for Agriculture have clear responsibilities to ensure the safety of the food supply chain. In this context, the current statutory remit for FSANZ to coordinate food recalls in Australia at the request of States and Territories is appropriate and useful. This is further supported by the National Food Incident Response Protocol developed by the Implementation Subcommittee for Food Regulation. Any statutory changes to FSANZ's role in foodborne illness incident response may have implications for the legislative responsibilities of relevant ministers in each jurisdiction.

FSANZ may have a greater role in operating as an early alert system/mechanism for States and Territories for emerging food related risks. Through its intelligence and interactions with international food regulatory bodies, FSANZ may be aware of risks ahead of jurisdictions, where FSANZ is well placed to alert jurisdictions of pending risks. This may result in faster, more coordinated response or recalls when the risks emerge.

In the US Food and Drug Administration's (FDA) New Era of Smarter Food Safety: Blueprint for the Future[4], early alert or predictive analytics capabilities have been identified as part of a modern food safety approach, where the collation and analysis of data can support inspection, outbreak response and recall modernisation. The FDA has considered leveraging data from states with comparable regulatory and public health systems and utilising reliable third-party audits (through information-sharing agreements) to build a database to support preventative approaches.

Importantly for FSANZ, this function does not require legislative change and supports FSANZ's role in intelligence gathering and information sharing. Additional benefit may be realised through improvements to the sharing of information between FSANZ and the food regulatory system.

Action: enhanced collaboration based around information sharing could also extend to international partnerships with overseas jurisdictions (including standard-setting bodies and other regulators).

The Victorian Government supports this action, noting it does not require legislative change. FSANZ can collaborate with international food regulatory bodies in support of greater information sharing and is well placed to coordinate this information across jurisdictions, a function which cannot be achieved individually by States and Territories. In particular, Victoria considers there is benefit for the Australia New Zealand food regulatory system in FSANZ collaborating on and intelligence gathering with relevant disciplines to support a One Health approach, both domestically and internationally.

Action: FSANZ's databank could be available to drive high-quality research and policy work both across and outside government

The Victorian Government supports in principle FSANZ making its data available to other stakeholders, however, holds some concern in utilising s13(o) of the Act to charge a fee. Where there are commercial interests to be gained in utilising the information, this may be warranted, however for academic institutions or research-based requests, a royalty free licence may be more appropriate in supporting food policy development. Given the Act currently provides for fee-for-service arrangements, this revenue stream may be small.

[4] https://www.fda.gov/food/new-era-smarter-food-safety viewed 29 April 2021

Response to Option 2, Component 6 | Streamline FSANZ's governance and operations

Action: Creating a smaller, more explicitly skills-based Board, consolidating to 8 people from 12

The Victorian Government supports reducing the size of the Board, subject to being able to retain sufficient breadth of expertise and the workload being manageable for a smaller Board.

To ensure an effective Board, there should be core competencies held by a minimum proportion of the Board (such as 50 per cent) rather than the current representative membership. Consideration of the core expertise needed to support FSANZ's core objective should include public health and safety and risk assessment (including microbiology, nutrition and dietary patterns, and toxicology).

Additional expertise might include food regulation, consumer affairs, community development, food science, public sector governance and accountability, health economics, and the food industry (including knowledge of the food supply chain).

Action: Streamlining nomination and appointment processes for board members

The Victorian Government supports replacing the current nomination requirement with a simpler, but open and transparent, provision requiring that Board members must have relevant technical and governance skills, experience and knowledge.

Where a vacancy arises, the Board should assess the remaining skills mix, together with consideration of the workplan, to advise ministers on what skill sets are required when filling the vacancy through a transparent and competitive process. Consideration should also be given to even gender representation.

Given the critical partnership between the Board and the Food Ministers' Meeting, ministerial consultation and agreement to all proposed appointments remains important.

Action: Moving to a virtual by default board meeting model.

The Victorian Government supports this action, acknowledging that this would reduce costs and enable a more flexible and responsive governance model.

Action: Investment into business solutions could help staff work more efficiently

The Victorian Government supports utilising technology to support in-house business functions, including virtual conferencing to support board meetings. Continuous improvement should be part of any business to drive greater efficiency and productivity, outside of any formal review process, acknowledging that a re-prioritisation of existing resources would be required to deliver these outcomes.

Action: new cost-recovery mechanisms for industry-initiated work

The Victorian Government notes the draft RIS indicates a separate, targeted review may be warranted to understand any changes to FSANZ revenue streams with expanded provisions for cost-recovery. Victoria considers that while cost-recovery mechanisms may provide additional revenue, it can distort prioritisation of work, particularly when resourcing is stretched. Any consideration of expanding the cost-recover mechanisms of FSANZ should be in accordance with the Australian Government Cost Recovery Guidelines[5].

[5] https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304

Response to Option 3 | Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

Response to Option 3, Component 1 | Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative; potentially extended to include New Zealand

> "Under current legislation, FSANZ can only coordinate food incidents and food recalls at the request of Australian states and territories (Section 13(1k)), and under state and territory laws." (p. 64)

The Victorian Government notes that while there is merit in FSANZ being able to coordinate certain food incidents and recalls without a request from a jurisdiction, it could result in FSANZ acting without adequate knowledge of local systems and supply chains. Any new provision should require FSANZ to first collaborate with jurisdictions. Victoria seeks additional advice on the implications of any statutory changes to FSANZ's role in foodborne illness incident response for the legislative responsibilities of Ministers and the potential implications for resourcing and enforcement activities of jurisdictions.

Response to Option 3, Component 2 | Provide for FSANZ to give greater guidance on food standards

Action: Including a statement of intent alongside food standards in the Food Standards Code

The Victorian Government strongly supports inclusion of a statement of intent, similar to an explanatory memorandum, alongside food standards to ensure that the policy position and intent of the standard is clear. Versions of these were previously included in standards but were removed when the Code's drafting was reviewed in 2016. Victoria considers that the removal of these introductory statements has reduced the clarity of the standards.

Action: Resourcing FSANZ to update and maintain industry guidelines

The Victorian Government supports reintroducing guidelines for industry. FSANZ previously provided guidelines that included useful practical examples for industry. Victoria also considers it important to ensure the drafting of standards uses parliamentary drafters (or equivalents), with standards accompanied by explanatory memorandums, to reduce variations in interpretations. Guidelines should therefore focus on the practical application of the standard for industry. Where it becomes clear that a standard invites differing interpretations, this should be addressed by amending the standard.

Action: Introduce a power for FSANZ to make binding interpretations about food standards either in response to an application or proposal, or on its own initiative

The Victorian Government does not support introducing a new power for FSANZ to make binding interpretations about food standards on its own initiative. Binding interpretations are not an appropriate mechanism to facilitate consistency in a national regulatory system. It would result in an unnecessary duplication of powers between jurisdictions and FSANZ – and is likely to create regulatory confusion particularly in an ongoing compliance investigation, resulting in FSANZ acting as an arbiter in disputes (between, say, a jurisdiction and a food manufacturer) without the full context of the investigation.

Action: Resourcing FSANZ to assist Australian businesses to prepare an evidence dossier to substantiate general health claims

The Victorian Government does not support resourcing FSANZ to assist businesses prepare evidence dossiers for self-substantiated health claims. It is likely to divert resources away from other necessary functions in achieving FSANZ's goals, be resource intensive, and be of benefit to select businesses only.

Guidance already exists for industry to assist in preparing evidence dossiers. Issues arising from dossiers for self-substantiated claims usually relate to an inadequate assessment of evidence before industry takes a claim to market. It is not clear whether this relates to insufficient information being available for industry, insufficient technical skills within the business, or a desire to reach market quickly in the knowledge there is no independent interim assessment step.

Better solutions could involve FSANZ verifying evidence before a claim goes to market (via a legislated function to conduct risk and evidence assessments in support of standards), resourcing FSANZ to keep standards up-to-date to ensure regular additions of new pre-approved claims (for businesses without the technical skills), or removing the option for self-substantiated claims from the Code.

Action: Providing for a determination of what is not a food.

The Victorian Government supports providing a ministerial power to determine a product as a food under s6 of the Act. The provisions of this section could be broadened to determine that a product is not a food for the purposes of the Act to specifically exclude items, noting the New Zealand Governor General already has this power under its *Food Act 2014.* Such determinations will need to consider implications for state-based legislation to ensure any foods or food products are not inadvertently unregulated.

Action: Providing for a broader basis for interpretation of what constitutes a therapeutic good

The Victorian Government supports broadening the provision within the Act that excludes therapeutic goods from the definition of 'food' to mirror the language in the *Therapeutic Goods Act 1989* to exclude goods which "have a tradition of use as therapeutic goods in the form in which they are presented."

Response to Option 3, Component 3 | Position FSANZ to take on an enforcement role

Action (option 1): FSANZ could take on limited enforcement activities

"The legislation could be amended to provide FSANZ with an enforcement function specific to select food standards. In the first instance, this could include standards that have been reported to be challenging to enforce at a jurisdictional level due to capability or capacity issue, such as food labels (including health claims) and novel foods." (p. 65)

The Victorian Government does not support the FSANZ Act being amended to provide FSANZ enforcement functions. This would present significant challenges including:

- Jurisdictions will still have overarching policy responsibility for the development/amendment of standards that would be implemented by a Commonwealth regulator. A new mechanism would be required to ensure that operational policy and implementation undertaken by the Commonwealth reflects the overarching policy intent agreed by the Food Ministers' Meeting.
- The development/amendment of standards intended to be monitored and enforced by FSANZ would require the Food Ministers' Meeting to have more discretion over drafting and approval of the standards to ensure a clear separation of powers between the legislative arm setting the standards (Food Ministers' Meeting) and the enforcement arm administering (aspects of a standard) within FSANZ. This would require legislative changes to the process for standards setting and would potentially result in different standard setting processes for standards regulated by FSANZ compared to standards regulated by jurisdictions.

- No clear principles have been suggested to determine how legislative responsibilities for monitoring and enforcing compliance with food standards could be sensibly and efficiently delineated between the Commonwealth, and state and territories. Without clear advice from legislative drafters across jurisdictions, there is a risk that Commonwealth legislation could inadvertently invalidate state and territory legislation[6], leaving gaps in regulation and undermining the bi-national system.
- An expanded role for FSANZ in enforcement diminishes its independence in developing standards and could divert focus from other core functions. Implementation of an enforcement function requires considered resourcing to ensure all functions can be effectively delivered.

Victoria notes there is merit in a proposal to centralise some specific risk and evidence assessments to support the appropriate enforcement of standards by jurisdictions. Victoria considers functions that require technical assessments that have not been traditionally assessed by food safety regulators, such as assessment of large scientific dossiers about health benefits or long-term safety concerns (e.g. as for health claims and novel foods if provision for industry self-substantiation is maintained within the Code) could be appropriately delivered by FSANZ. Many jurisdictions have limited or negligible resources to undertake complex technical assessments to ensure compliance with relevant standards such as Standard 1.2.7 Health Claims and Standard 1.5.1 Novel Foods. Adding this function to FSANZ would likely contribute to the overall integrity of the bi-national system but would require new, dedicated funding.

Action: (Option 2) FSANZ becomes the single, bi-national regulator

"FSANZ could have a fully-encompassing enforcement role that includes responsibility for oversighting all food standards. This would mean it would have statutory functions relating to coordinating the enforcement of food standards (and have the relevant legislative powers to do so), however, the institutional arrangements utilised to deliver on this function could be more complex." (p. 66)

The Victorian Government does not support the proposal for FSANZ to become a single, bi-national regulator.

The model appears to propose providing overall legislative discretion and powers for bi-national food regulation with the Commonwealth and delegated regulatory responsibilities, with limited discretion, to jurisdictions. However, the RIS provides no detail about:

- problems in the current system that this model is expected to address
- the benefits of such a system over and above the current bi-national food regulatory approach
- how a single, bi-national regulator with functions delegated to state-based regulators could be legislated for across multiple jurisdictions
- how the model could be applied in practice.

In addition to the issues identified under option 1, option 2 is expected to present significant challenges for design and implementation and complicate rather than simplify the current approach to regulation. While the proposed model suggests local enforcement bodies would retain the ability to exercise discretion in enforcement, this ability is likely to be diminished by centralising enforcement action, reducing the ability for states and territories to identify the needs and risks of a

[6] By operation of s 109 of the Commonwealth Constitution.

specific sector in tailoring a response. It is unlikely that the example provided of the regulation of maritime safety provides a useful or comparable analogy to the scale of change that would be required to transition food regulation to a bi-national enforcement model or the impact that it would have on jurisdictions' regulatory operations or (both health and industry-based) food policies.

While this option 2 action appears to be aimed at improving consistency in enforcement approaches and reducing duplication of regulatory effort bi-nationally, there is already a comprehensive package of work being undertaken as part of the Food Ministers' Meeting's modernisation project to address these specific issues. Improved consistency and tailored approaches to enforcement may be achieved through other operational or legislative change that sits outside the FSANZ Act and does not require FSANZ to take on an enforcement role. Victoria does not support amendments to the FSANZ Act that pre-empt this broader modernisation work or that implement an approach to bi-national enforcement that has not been designed with comprehensive consideration of all of the associated challenges.

Response to Option 3, Component 4 | Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage

As discussed above, the Victorian Government supports FSANZ having legislated functions that enable it to build and maintain international collaborations and support harmonisation of standards where this is appropriate. This extends to consideration of collaboration in support of a One Health approach for food and the protection of public health and safety.

FSANZ's functions should be drafted to enable FSANZ to give full effect to its statutory objectives. Where trade is recognised as a core goal in FSANZ's statutory objectives, the functional areas in which FSANZ has remit to operate need to reflect this objective. Embedding a collaborative, partnership approach to working with international agencies in FSANZ's functions could achieve this outcome without the need to prescribe specific processes that FSANZ must (or must not) undertake.

Any proposal to provide FSANZ with legislative functions or powers that seek to facilitate harmonisation of food standards internationally (e.g. power to automatically adopt international assessments or standards) must be made with regard to FSANZ's core role as a risk assessor. Victoria does not support any amendment of the FSANZ Act that diminishes the discretion of the Food Ministers' Meeting to establish food regulatory policy appropriate to the bi-national context and require that standards be set according to this policy (refer also to Response to Option 2 Component 2 (automatic adoption pathway).

Summary of supported reform proposals for the FSANZ Act Review

The Victorian Government supports the following combination of proposed Components from Options 2 and 3 as described in the table below, noting that not all actions required legislative change. Inclusion of a Component does not indicate support for every action indicated for this component under the Draft RIS, but only the actions as described below.

Modernising the FSANZ Act – draft Regulatory Impact Statement reform proposals	
Option 2 – modernise the Act, make it agile, resilient and fit-for-purpose	**Key conditions of support**
Component 1	Clarify objectives and functions and reflect these in the Act
	• Support-in-principle the inclusion of a definition of 'protecting public health and safety' **that captures long term public health (including nutrition and chronic disease) and safety** • Support-in-principle alignment of wording around public health protection across s3 and s18 to 'a high standard of safety and public health protection' • Support-in-principle expansion of the objectives of FSANZ to recognise trade as a core goal; specify that this trade objective is subordinate to public health and safety objectives. Clarify interaction with other objectives to ensure no negative impact on provision of information and preventing misleading and deceptive conduct.
Component 2	Facilitate risk-based approaches to developing or amending food regulatory measures
	• Support for greater use of guidelines and statements of intent • Support for codes of practice as **supporting instruments to outcomes-based standards where they can assist the diversity of the food sector to interpret and adopt standards** • Support for a decision-making tool to enable better use of the full suite of regulatory and non-regulatory measures • Support-in-principle for delegation of ministerial decision-making to ratify changes to foods standards to particular departmental officials • Support for minor amendment to the functions of FSANZ to enable FSANZ to draw on research from other organisations and conduct surveillance in support of its objectives on its own initiative where this is not provided in current drafting (s13(1)(g)).
Component 4	Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation
	• Support for resourcing FSANZ to undertake more timely, holistic and regular reviews of food standards **but also need a legislative obligation to require standards be kept current** • Support for a clear legislative remit and appropriate resourcing to drive the collection, consolidation and communication of food safety or food composition data to facilitate intelligence-led decision making –**provided this data and analysis is made publicly available providing a repository of food safety information. This should be captured under the FSANZ functional area of providing authoritative scientific advice on food-related issues. This surveillance and communication function should not set FSANZ up as a new research centre.** • Support for FSANZ to collate and create consumer-facing food safety education materials.
Component 5	Foster new approaches to working with other agencies with a focus on intelligence-sharing
	• Support-in-principle proposals that enable FSANZ and the Food Ministers' Meeting to undertake periodic joint agenda-setting to agree on the **applications and proposals (not just proposals)** on which to focus. Decisions regarding timing for and prioritisation of review of standards should be made in a systematic way that is informed by emerging food safety risks, public health needs, food and market trends, and priorities of food ministers • Support-in-principle earlier involvement with the FRSC to understand the potential food safety and regulatory impact of changes to food standards. This is already occurring and does not need to be included in the Act • Support-in-principle FSANZ utilising its intelligence base to highlight emerging risks and position enforcement agencies to stand up a proactive response and manage issues before they arise. • Support-in-principle FSANZ's databank could be available to drive high-quality research and policy work both across government and to the public (including universities) – provided FSANZ's resources are not diverted to setting itself up as a research centre but as a source of data. Collaboration based around information sharing could be extended to international partners
Component 6	Streamline FSANZ's governance and operations
	• Support a smaller, more explicitly skills-based Board, consolidating to 8 people from 12 – **where the core expertise needed to support FSANZ's core objective should include public health and safety and risk assessment (including microbiology, nutrition and dietary patterns, and toxicology). Additional expertise might include food regulation, consumer affairs, community development, food science, public sector governance and accountability, health economics, and the food industry (including knowledge of the food supply chain). Where a vacancy arises, the Board should assess the remaining skills mix, together with consideration of the workplan.** • Support streamlining nomination and appointment processes for board members. **Recruitment process should be open and transparent involving consultation and agreement by members of the Food Ministers' Meeting** • Support move to 'virtual by default' board meetings • Support investment into business solutions that could help FSANZ staff work more efficiently (online portal)

Option 3 – build on FSANZ's role to reinforce the bi-national nature of the joint food standards system (includes all of the components of Option 2 plus);	**Key conditions of support**
Component 2	Provide for FSANZ to give greater guidance on food standards
	• Support for the inclusion of a statement of intent alongside food standards in the Food Standards Code to describe what FSANZ wants to achieve in the writing of each food standard (akin to Explanatory Memoranda) • Support resourcing FSANZ to update and maintain industry guidelines which provide advice on how industry can comply with food standards. • Support for giving the Minister responsibility and powers under both TGA and FSANZ Acts to determine if a product is a food or a medicine by providing a determination of what is not a food, or broadening the basis for interpretation of what constitutes a therapeutic good
Component 4	Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage
	Support-in-principle for FSANZ to build better strategic relationships with comparable international regulators to either share assessments or standards or make these together for mutual benefit as part of the harmonisation process. This should be supported by FSANZ having legislated functions that enable it, **as a risk assessor**, to build international collaborations and support harmonisation of standards **but only to the extent that it does not diminish the discretion of the Food Ministers' Meeting to require that standards be set according to food regulatory policy appropriate to the bi-national context**.

Response ID [redacted]

Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-16 15:42:52**

About you

What is your name?

Name:
Paul Hunt

What is your email address?

Email:
[redacted]

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Government

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Department of Health Tasmania

Which country are you responding from?

Drop down list about which country the respondent is based:
Australia

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

Two key issues alluded to in the identified key policy problems include:
i. FSANZ focus on industry driven ‘applications’ at the expense of government lead ‘proposals’
ii. the standard by standard, piecemeal assessment that fails to account for the cumulative effect of successive applications
The proposed policy solutions do not clearly outline how these problems will be addressed.
An additional key policy problem that has not been articulated is that the food regulation system is currently driving the food supply in a direction which is not helpful to human health with a proliferation of processed foods of limited nutritional value.
The draft RIS highlights the following points that reinforce the potential for the system to do more to address this policy problem:
• Access to adequate food is a basic human right
• Food regulation is an important lever in growing the need to shape population dietary and consumption trends, which are in turn associated with heightened risk of morbidity and mortality
• Public health issues, such as changing consumption patterns, have increased concerns about chronic conditions relating to diet (such as obesity
• Research and stakeholder engagement to date has illustrated an ongoing case for regulation, where regulation protects a public good and addresses market failures.
Some potential policy solutions to address this problem include:
• Elevate the importance of Ministerial Policy Guidelines so FSANZ must have more than ‘regard for’ them. Section 18 of the FSANZ Act currently refers to issues FSANZ must have ‘regard for’ in developing food regulatory measures. Ministerial Policy Guidelines should provide clear direction for FSANZ as Ministers are the ultimate decision makers in the system. It should be noted that all reviews requested by Ministers in recent years of FSANZ assessments relate to lack of account

for Ministerial Policy Guidelines.
• Reference the need for FSANZ to have regard for relevant domestic or international food related strategies that have been developed to protect public health, to which Australia (and/or New Zealand) is a signatory, when developing food regulatory measures. A compilation of relevant strategies would need to be created in a manner that could be readily and easily updated. Examples of current relevant strategies include:
o WHO International Code of marketing of breastmilk substitutes
o Regional action framework on protecting children from the harmful impact of food marketing in the Western Pacific.
• Incorporate contemporary health economic assessment methodologies to determine the costs and benefits of regulatory impacts on health. This includes both direct and indirect costs and cost associated with longer term health impacts. The evolving literature on commercial determinants of health will necessitate that Governments do more to protect the community from profit driven activities that are harmful to health. The new FSANZ Act will need to be agile enough to incorporate health economics assessment methodologies that address such concerns as they evolve.
*strategies and approaches used by the private sector to promote products and choices that are detrimental to health

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

It will require cooperation across all Government sectors if we are to continue to produce the right amount and right sorts of food to meet population needs in a sustainable way. The Tasmanian Department of Health (DoH Tasmania) would support the inclusion of sustainability being something FSANZ should have regard for in the development of standards.
The recent work on fats and oils labelling clearly demonstrated that food sustainability and the environment are important drivers of food choice for many consumers. The Food Regulation Emerging Issues Register and global megatrends list also highlights a range of environmental issues that will impact on the future food supply and associated regulation issues. Whether these issues are dealt with from within the food regulatory system or through other regulatory mechanisms such as environment protection or consumer law is a valid question. However, it is important the food regulatory system is aware of what other Government regulations are trying to achieve and at least do not impede progress in other areas.

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

The current Kava pilot program is a relevant example of the food regulation system regarding South Pacific Islander Indigenous culture.
The United Nations Declaration on the Rights of Indigenous Peoples establishes the principle of free, prior and informed consent as a pre-requisite for activities that affect indigenous ancestral lands and natural resources, and this extends to food from the land, sea and waterways.
Attempts to modernise the food regulation system could consider ways to protect indigenous sovereignty in use of natural food resources which are important for dietary diversity as well as deep connections to cultural custom and ancestral lands and waterways.
DoH Tasmania supports the inclusion of indigenous culture and food expertise being something FSANZ should have regard for in the development of standards.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Option 1 does not provide mechanisms to resolve the current challenges faced by the Food Regulation System, nor does Option 1 future proof the system.
Getting the right balance between the tensions of ‘health protection’ versus ‘wealth creation’ will be challenging. The analysis of Options 2 and 3 has focussed on the benefits to ‘wealth creation’ with little regard for potential costs to ‘health protection’. Our concern is that while Option 1 doesn’t address the current challenges or future proof the system we remain sceptical about the benefits to ‘health protection’ of Options 2 and 3. The relative benefits to ‘health protection’ in Options 2 or 3 needs more assessment.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Out-of-date or ineffective standards render regulators unable to take effective enforcement action.
Proposals to update standards (such as infant formula, novel food and sports foods) have been left in abeyance for many years and recognised as ‘unfit for purpose’. The risks to the stakeholders include consumers being exposed to potentially unsafe foods, industry working with regulatory uncertainty and regulators unable to take effective enforcement action.
If the food regulatory system does not take greater account of the long-term implications of food on public health it could result in a huge cost burden to society associated with management of diet-related chronic conditions. The risk is that all stakeholders will be impacted as finite Government resources continue to be drained by the health system and therefore unavailable for other legitimate Government pursuits. As the draft RIS states: food regulation is an important lever in growing the need to shape population dietary and consumption trends, which are in turn associated with heightened risk of morbidity and mortality. DoH Tasmania acknowledges that there is a limit to what the food regulatory system can do to shape the food supply. However, it is important that regulatory decisions do not drive proliferation of foods that are harmful to health.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

There are potential indirect and direct health costs associated with prematurely bringing ‘unsafe’ (including unsafe for long term health) products to market.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost of delays of approving Government lead proposals are also high. For example, it took many years to progress the iodine and folic acid fortification standards and yet the evaluation of these initiatives clearly demonstrated the economic benefits. The savings to Government associated with these initiatives could have been brought forward by several years had this been progressed more efficiently.

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Assessment of the economic costs and benefits are included in the regulatory impact statements for all standards. Whilst the direct and indirect health costs are not always well articulated due to limitations in methodology, it should be possible to extract cost data from regulatory impact statements associated with standards that have been progressed in recent times. This would allow a desktop analysis of the cost to Government in delays in finalising standards. The mandatory fortification standards would be a good starting point but also the cost to Government associated with the long lag time in implementing pregnancy warning labels on alcohol.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

• Ongoing outdated standards due to delays in progressing Government proposals leading to ineffective enforcement of standards.
• Untimely responses to industry due to regulatory uncertainty.
• Potential for duplication of effort across jurisdictions for example with scientific assessment of health claims, and with interpretation of the Code.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Enforcement and monitoring in Tasmania is undertaken at both the State and Local Government level.
At State level there is roughly one FTE directed to enforcement and monitoring in the Department of Health, noting this is not a defined FTE but a part role of several officers who take on other related roles, and three FTEs in the Department of Primary Industries, Parks, Water and the Environment.
At the local government level, it is estimated about 30% of Environmental Health Officers time is directed to food regulation enforcement and monitoring activities which equates to approximately 15 FTE (30% of 50 FTEs).
There is very little focus at State and local level on Chapter 2 standards.

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

Including an explanation of public health (referring also to long term health) and addressing the principle of equity is an essential clarification needed in the Act. The objectives should reflect the Aspirations of the system.
Trade is required to be considered in the development of food standards. Regulatory Impact Statements are required for all proposed standards by the Office of Best Practice Regulation. Regulatory Impact Statements all include a cost-benefit analysis where regulation must not impede trade except when it can be justified.
DoH Tasmania notes that Free Trade Agreements encourage harmonisation with international laws except for the protection of health and safety. Developing standards for the purpose of facilitating trade may contravene of these agreements. Therefore, the inclusion of ‘trade’ in the overarching objectives may be in conflict with International Free Trade Agreements. It is recommended that further assessment of this potential conflict is undertaken.

12 If FSANZ’s objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

A broader definition would be more useful and help to future proof the food regulatory system.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

Reputation/marketing/sustainable food supply/protection of food supply for future generations.

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

Recognition of indigenous culture and food expertise in the Act is important. How best to achieve this will require consultation with relevant indigenous organisations.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

As per question 14 this will require consultation with relevant indigenous organisations.

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Positive

Please provide any comments in the box below. :

DoH Tasmania agrees in principle.
The proposal to adopt the triage system on page 53 to decide what goes through a low, medium or high-risk approach would add a degree of regulatory flexibility. We anticipate there will be considerable debate about criteria and thresholds for risk, with very different interpretations from different stakeholders. This could add significantly to decision making requirements and workload for FSANZ.
The RIS refers (on page 53) about abolishing the high-level health claims pathway suggesting this pathway 'has never been used and is redundant'. It is not clear what 'never been used' means and why it would be redundant. The draft RIS also states 'High level health claims' must be based on a food-health relationship pre-approved by FSANZ. There are currently 13 pre-approved food-health relationships for high level health claims listed in the Standard. The health claims standard took many years to negotiate and replaced previous prohibitions on health claims. The high-level health claims pathway was included to protect consumers from misleading claims about food. If abolishing the high-level health claims pathway means that high-level health claims would be dealt with through the indicative risk pathway, DoH Tasmania would be of the view that all high-level health claims should be considered high-risk and require pre-market assessment.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

Ministers need to retain the overall decision-making responsibilities given the joint nature of the system across two countries and the states and territories of Australia.
Provisions within the Act for Ministers to delegate decision making power to the FSANZ Board or CEO has some merit. However, Food Ministers need to agree on the conditions for delegation.
Delegation might assist in reducing the number of assessments that Ministers need to consider which could streamline processes.
If decisions were to be delegated to the FSANZ Board it would be important that the Board was configured to enable informed decision making to occur. Alternatively, this could be achieved by Ministers delegating to jurisdictional senior officers.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

DoH Tasmania is not opposed to guidelines and codes of practice being instruments that can be used to support the food regulatory system.
Guidelines and codes of practice need clear definitions, and a case-by-case assessment of when they are utilised is needed. The use of Guidelines and codes of practice need to be supported by a decision-making framework and require jurisdictional oversight.
Guidelines currently add value when they have Code interpretive functions (eg Safe Food Australia a guide to the food safety standards and Getting your claims right to support health claims).

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

-

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

-

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Including new regulatory options in the Act has merit to help future proof the system.
Decisions about when to utilise different regulatory options, how they are implemented and the responsibility for regulatory oversight needs much more consideration.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

The current Kava issue may have lent itself to a time limited regulatory sandbox approach.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ has a valuable role in food safety intelligence as do various other organisations. The advantages of FSANZ being the ‘engine’ is not clear. It is important is that all food intelligence organisations collaborate effectively.

24 Should a function for FSANZ’s to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ already perform useful functions in these areas. It makes sense to legitimise these functions if there is some regulatory barrier for them continuing.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

-

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

-

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Reference Q17. If decision making is delegated to the FSANZ Board then streamlining the Board may not be a good idea.
Food regulation is a complex area with a range of highly contested issues and a need to balance ‘wealth creation’ and ‘health protection’ across two countries. The FSANZ Board needs to be large enough to ensure balanced representation.
If a smaller, and more skills-based, Board was to be adopted, then very careful process around conflicts of interests would need to be included. Retaining a larger Board helps to balance out potential conflicts of interest. Diversity is a recognised advantage in all decision-making processes even if it becomes less efficient.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

-

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

-

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

-

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

Cost recovery fees need to be able to be retained by FSANZ to ensure core funds are used to progress Government business.
Cost recovery fees need to be sufficient to cover industry, market-driven applications.
FSANZ needs to remain an independent scientific body. If cost recovery from industry is included in the model there needs to be a high degree of management related to potential, perceived or real conflicts of interest to preserve the independent scientific integrity.
FSANZ is already seen by some external stakeholders as ‘too close to industry’. The risk of this reputation being compromised further could lead to a lack of trust in the food regulatory system.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

See Q31. Loss of FSANZ’s independent scientific integrity and loss of trust in FSANZ impacts negatively on all stakeholders.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

-

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

• Capacity to respond meaningfully to the volume of work.
• Out-dated standards that impede regulatory action.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

-

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ currently take a lead role in coordinating recalls and food incidents in line with the food recall and national food incident response protocols. This is a well established function for FSANZ and should be retained.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

-

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

-

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

There is value in FSANZ giving greater guidance on food standards.
Building a library of binding interpretations and statements of intent has merit and would assist smaller jurisdictions such as Tasmania and promote consistency across the system, providing such actions are developed in close collaboration with state and territory (and NZ) regulators.
FSANZ working with industry to prepare evidence dossiers is not a good use of public funding. This is an industry responsibility. However, FSANZ providing guidance to industry on expects levels of evidence and assessing evidence would be valuable.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

-

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

-

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please:

Option 1 FSANZ taking on limited enforcement activities specific to select food standards has merit. Especially in relation to some aspects of Chapters 1 and 2 such as health claims, the Health Star Rating system (should this become mandatory) and any future standards that incorporate self-substantiation. Such standards require a high level of specialist expertise and capacity which is not always readily available at state/territory level, especially in the smaller jurisdictions.
Option 2 –Food safety management is best regulated at a state/territory or local Government level and undertaken by those with local knowledge and relationships. There is a risk FSANZ would end up focussing on the national food industries at the expense of small to medium businesses and the risk of food safety in rural areas could be seriously jeopardised.
To legislate for FSANZ to have limited enforcement activities specific to identified food standards (perhaps some of the Chapters 1 and 2 standards) and agreed to by Food Ministers has merit. There may be lessons from consumer law where dual powers are enacted, with the national level regulating national issues and the states and territories dealing with local issues.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

Enforcement and monitoring in Tasmania is undertaken at both the State and Local Government level.
At State level there is roughly one FTE directed to enforcement and monitoring in the Department of Health, noting this is not a defined FTE but a part role of several officers who take on other related roles, and three FTEs in the Department of Primary Industries, Parks, Water and the Environment.
At a local government level it is estimated about 30% of Environmental Health Officers time is directed to food regulation enforcement and monitoring activities which equates to approximately 15 FTE (30% of 50 FTEs).
There is very little focus at State and local level on Chapter 2 standards.

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

Australia and New Zealand have the potential be world leaders in food standards development. It may not always be in the public health interest to adopt international standards.
By way of explanation, Ministerial Policy Guidelines for Infant Formula require that substances added are not only safe but also efficacious. This principle was included in the Ministerial Policy Guideline to protect infants who are formula fed. It was specifically designed to protect caregivers from being misled as to the healthfulness of one infant formula product over another. This policy principle has met with resistance from industry, as it is at odds with other major international regulatory bodies such as the EU and the USFDA.
Whilst it makes sense to harmonise with international food standards, it is important that Australia and New Zealand retain the right to deviate where there is legitimate concern for public health and safety and potentially drive change globally.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Justification of the benefits and costs to public health and safety (long and short term) and public confidence in the system should be attempted for all four components across Tables 17-20.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

FSANZ generally has a reputation for high-level independent scientific assessment.
FSANZ Act amendments related to cost recovery from industry need to:
• protect the progress of Government business (i.e. proposals are not jeopardised by paid industry applications)
• cover the cost of the entirety of the work
• ensure funds are retained by FSANZ (and not returned to Government consolidated revenue)
• incorporate appropriate conflict of interest management strategies to preserve FSANZ's independent scientific integrity.

Overarching views on the RIS

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Please provide your response in the box. :

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An analysis that more thoroughly considers the impact of the proposed policy solutions on public health and safety (both long and short term) and public confidence in the system is warranted.
The scientific integrity and independence of FSANZ is an essential element of protecting public confidence in the system and must be retained and valued.

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Ensuring public health (both long and short term), safety and public confidence in the system remain the over-arching drivers of the system. Food Ministers need to retain over-arching decision making even if some decision-making functions are delegated to senior jurisdictional officials or FSANZ.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

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The Aspirations suggest the vision for the food regulatory system is A world-class collaborative food regulatory system focussed on improving and protecting public health and safety.
DoH Tasmania recommends the draft Aspiration's vision should extend to ensuring public confidence in the system and be clear that public health includes both short and long-term health and read as follows:
A world-class, collaborative food regulatory system focussed on improving and protecting public health*, safety and public confidence in the system.
*Includes both short and long-term health implications
The proposed policy solutions need to focus on establishing a regulatory environment with a primary goal of protecting public health (both short and long-term health), safety and public confidence in the food system.
It is not clear how the proposed policy solutions will achieve this. Further analysis of how the proposed policy solutions will contribute to the over-arching vision is warranted.

Supplementary information

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• Whilst the draft RIS does not address future funding requirements for FSANZ's, resourcing implications need to be considered alongside the Act amendments as FSANZ is currently unable to address core functions within the current remit (e.g. maintaining contemporary standards). Extending FSANZ's remit will have resource implications.

Upload any supplementary information here. :
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Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement

About you

What is your name?

Paul Hunt

What is your email address?

[redacted]

Please tick this box if you would like your response to be confidential

What sector do you represent?

Government (selected from drop down menu)

What is your organisation?

Department of Health Tasmania)

Which country are you responding from?

Australia

An opportunity to submit any other information about your organisation you would like to provide.

(Leave blank)

Policy Problems

1. **Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?**

   Two key issues alluded to in the identified *key policy problems* include:

   i. FSANZ focus on industry driven 'applications' at the expense of government lead 'proposals'

   ii. the standard by standard, piecemeal assessment that fails to account for the cumulative effect of successive applications

   The *proposed policy solutions* do not clearly outline how these problems will be addressed.

An additional *key policy problem* that has not been articulated is that the ***food regulation system is currently driving the food supply in a direction which is not helpful to human health with a proliferation of processed foods of limited nutritional value***.

The draft RIS highlights the following points that reinforce the potential for the system to do more to address this policy problem:

- *Access to adequate food is a basic human right*
- *Food regulation is an important lever in growing the need to shape population dietary and consumption trends, which are in turn associated with heightened risk of morbidity and mortality*
- *Public health issues, such as changing consumption patterns, have increased concerns about chronic conditions relating to diet (such as obesity*
- *Research and stakeholder engagement to date has illustrated an ongoing case for regulation, where regulation protects a public good and addresses market failures.*

Some potential *policy solutions* to address this problem include:

- Elevate the importance of Ministerial Policy Guidelines so FSANZ must have more than '*regard for'* them. Section 18 of the FSANZ Act currently refers to issues FSANZ must have *'regard for'* in developing food regulatory measures. Ministerial Policy Guidelines should provide clear direction for FSANZ as Ministers are the ultimate decision makers in the system. It should be noted that all reviews requested by Ministers in recent years of FSANZ assessments relate to lack of account for Ministerial Policy Guidelines.

- Reference the need for FSANZ to have *regard for* relevant domestic or international food related strategies that have been developed to protect public health, to which Australia (and/or New Zealand) is a signatory, when developing food regulatory measures. A compilation of relevant strategies would need to be created in a manner that could be readily and easily updated. Examples of current relevant strategies include:
    - *WHO International Code of marketing of breastmilk substitutes*
    - *Regional action framework on protecting children from the harmful impact of food marketing in the Western Pacific.*

- Incorporate contemporary health economic assessment methodologies to determine the costs and benefits of regulatory impacts on health. This includes both direct and indirect costs and cost associated with longer term health impacts. The evolving literature on commercial determinants of health will necessitate that Governments do more to protect the community from profit driven activities that are harmful to health. The new FSANZ Act will need to be agile enough to incorporate health economics assessment methodologies that address such concerns as they evolve.

**strategies and approaches used by the private sector to promote products and choices that are detrimental to health*

2. What examples or issues are you aware of in the food regulatory system regarding food sustainability?

It will require cooperation across all Government sectors if we are to continue to produce the right amount and right sorts of food to meet population needs in a sustainable way. The Tasmanian Department of Health (DoH Tasmania) would support the inclusion of sustainability being something FSANZ should have regard for in the development of standards.

The recent work on fats and oils labelling clearly demonstrated that food sustainability and the environment are important drivers of food choice for many consumers. The Food Regulation Emerging Issues Register and global megatrends list also highlights a range of environmental issues that will impact on the future food supply and associated regulation issues. Whether these issues are dealt with from within the food regulatory system or through other regulatory

mechanisms such as environment protection or consumer law is a valid question. However, it is important the food regulatory system is aware of what other Government regulations are trying to achieve and at least do not impede progress in other areas.

3. **What examples or issues are you aware of in the food regulatory system regarding recognition of indigenous culture and food expertise?**

   The current Kava pilot program is a relevant example of the food regulation system regarding South Pacific Islander Indigenous culture.

   The United Nations Declaration on the Rights of Indigenous Peoples establishes the principle of free, prior and informed consent as a pre-requisite for activities that affect indigenous ancestral lands and natural resources, and this extends to food from the land, sea and waterways.

   Attempts to modernise the food regulation system could consider ways to protect indigenous sovereignty in use of natural food resources which are important for dietary diversity as well as deep connections to cultural custom and ancestral lands and waterways.

   DoH Tasmania supports the inclusion of indigenous culture and food expertise being something FSANZ should have regard for in the development of standards.

Option 1: Retain the status quo

4. **Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?**

   [Option 1: Status quo]

   Option 1 does not provide mechanisms to resolve the current challenges faced by the Food Regulation System, nor does Option 1 future proof the system.

   Getting the right balance between the tensions of 'health protection' versus 'wealth creation' will be challenging. The analysis of Options 2 and 3 has focussed on the benefits to 'wealth creation' with little regard for potential costs to 'health protection'. Our concern is that while Option 1 doesn't address the current challenges or future proof the system we remain sceptical about the benefits to 'health protection' of Options 2 and 3. The relative benefits to 'health protection' in Options 2 or 3 needs more assessment.

5. **What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?**

   Out-of-date or ineffective standards render regulators unable to take effective enforcement action.

   Proposals to update standards (such as infant formula, novel food and sports foods) have been left in abeyance for many years and recognised as 'unfit for purpose'. The risks to the stakeholders include consumers being exposed to potentially unsafe foods, industry working with regulatory uncertainty and regulators unable to take effective enforcement action.

   If the food regulatory system does not take greater account of the long-term implications of food on public health it could result in a huge cost burden to society associated with management of diet-related chronic conditions. The risk is that all stakeholders will be impacted as finite Government resources continue to be drained by the health system and therefore unavailable for other legitimate Government pursuits. As the draft RIS states: *food regulation is an important lever in growing the need to shape population dietary and consumption trends, which are in turn associated with heightened risk of morbidity and mortality.* DoH Tasmania acknowledges that there is a limit to what the food regulatory system can do to shape the food supply. However, it is important that regulatory decisions do not drive proliferation of foods that are harmful to health.

6. **Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.**

   There are potential indirect and direct health costs associated with prematurely bringing 'unsafe' (including unsafe for long term health) products to market.

7. **Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?**

   The cost of delays of approving Government lead proposals are also high. For example, it took many years to progress the iodine and folic acid fortification standards and yet the evaluation of these initiatives clearly demonstrated the economic benefits. The savings to Government associated with these initiatives could have been brought forward by several years had this been progressed more efficiently.

8. **Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data**.

   Assessment of the economic costs and benefits are included in the regulatory impact statements for all standards. Whilst the direct and indirect health costs are not always well articulated due to limitations in methodology, it should be possible to extract cost data from regulatory impact statements associated with standards that have been progressed in recent times. This would allow a desktop analysis of the cost to Government in delays in finalising standards. The mandatory fortification standards would be a good starting point but also the cost to Government associated with the long lag time in implementing pregnancy warning labels on alcohol.

9. **What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?**

   - Ongoing outdated standards due to delays in progressing Government proposals leading to ineffective enforcement of standards.
   - Untimely responses to industry due to regulatory uncertainty.
   - Potential for duplication of effort across jurisdictions for example with scientific assessment of health claims, and with interpretation of the Code.

10. **(For jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?**

    Enforcement and monitoring in Tasmania is undertaken at both the State and Local Government level.

    At State level there is roughly one FTE directed to enforcement and monitoring in the Department of Health, noting this is not a defined FTE but a part role of several officers who take on other related roles, and three FTEs in the Department of Primary Industries, Parks, Water and the Environment.

    At the local government level, it is estimated about 30% of Environmental Health Officers time is directed to food regulation enforcement and monitoring activities which equates to approximately 15 FTE (30% of 50 FTEs).

    There is very little focus at State and local level on Chapter 2 standards.

Option 2: Modernise the Act to make it agile, resilient, and fit for purpose

11. **Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?** *[Option 2, Component 1 Clarify objectives and functions and reflect these in the Act]*

Including an explanation of public health (referring also to long term health) and addressing the principle of equity is an essential clarification needed in the Act.

The objectives should reflect the Aspirations of the system.

Trade is required to be considered in the development of food standards. Regulatory Impact Statements are required for all proposed standards by the Office of Best Practice Regulation. Regulatory Impact Statements all include a cost-benefit analysis where regulation must not impede trade except when it can be justified.

DoH Tasmania notes that Free Trade Agreements encourage harmonisation with international laws except for the protection of health and safety. Developing standards for the purpose of facilitating trade may contravene of these agreements. Therefore, the inclusion of 'trade' in the overarching objectives may be in conflict with International Free Trade Agreements. It is recommended that further assessment of this potential conflict is undertaken.

12. **If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts)**

A broader definition would be more useful and help to future proof the food regulatory system.

13. **What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?**

Reputation/marketing/sustainable food supply/protection of food supply for future generations.

14. **How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?**

Recognition of indigenous culture and food expertise in the Act is important. How best to achieve this will require consultation with relevant indigenous organisations.

15. **What economic opportunities might arise for indigenous businesses from bringing traditional goods to the broader market?**

As per question 14 this will require consultation with relevant indigenous organisations.

16. **Would the impact of pursuing Option 2, Component 3 *(? Should this be component 2? A typo?)* represent a positive, negative or neutral outcome for your sector?** *[Option 2, Component 2 Facilitate risk-based approaches to developing or amending food regulatory measures]*

DoH Tasmania agrees in principle.

The proposal to adopt the triage system on page 53 to decide what goes through a low, medium or high-risk approach would add a degree of regulatory flexibility.

We anticipate there will be considerable debate about criteria and thresholds for risk, with very different interpretations from different stakeholders. This could add significantly to decision making requirements and workload for FSANZ.

The RIS refers (on page 53) about abolishing the high-level health claims pathway suggesting this pathway '*has never been used and is redundant*'. It is not clear what '*never been used*' means and why it would be redundant. The draft RIS also states *'High level health claims' must be based on a food-health relationship pre-approved by FSANZ. There are currently 13 pre-approved food-health relationships for high level health claims listed in the Standard*. The health claims standard took many years to negotiate and replaced previous prohibitions on health claims. The high-level health claims pathway was included to protect consumers from misleading claims about food. If abolishing the high-level health claims pathway means that high-level health claims would be dealt

with through the indicative risk pathway, DoH Tasmania would be of the view that all high-level health claims should be considered high-risk and require pre-market assessment.

17. **Do you think this Component should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?**

    Ministers need to retain the overall decision-making responsibilities given the joint nature of the system across two countries and the states and territories of Australia.

    Provisions within the Act for Ministers to delegate decision making power to the FSANZ Board or CEO has some merit. However, Food Ministers need to agree on the conditions for delegation.

    Delegation might assist in reducing the number of assessments that Ministers need to consider which could streamline processes.

    If decisions were to be delegated to the FSANZ Board it would be important that the Board was configured to enable informed decision making to occur.

    Alternatively, this could be achieved by Ministers delegating to jurisdictional senior officers.

18. **What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?**

    DoH Tasmania is not opposed to guidelines and codes of practice being instruments that can be used to support the food regulatory system.

    Guidelines and codes of practice need clear definitions, and a case-by-case assessment of when they are utilised is needed. The use of Guidelines and codes of practice need to be supported by a decision-making framework and require jurisdictional oversight.

    Guidelines currently add value when they have Code interpretive functions (eg *Safe Food Australia a guide to the food safety standards* and *Getting your claims right* to support health claims).

19. **Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?**

    -

20. **Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?**

    -

21. **Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?** *[Option 2, Component 3 Build in flexibility to create bespoke regulatory sandboxes]*

    Including new regulatory options in the Act has merit to help future proof the system.

    Decisions about when to utilise different regulatory options, how they are implemented and the responsibility for regulatory oversight needs much more consideration.

22. **What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?**

    The current Kava issue may have lent itself to a time limited regulatory sandbox approach.

23. **Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?** *[Option 2, Component 4 Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation]*

FSANZ has a valuable role in food safety intelligence as do various other organisations. The advantages of FSANZ being the 'engine' is not clear. It is important is that all food intelligence organisations collaborate effectively.

24. **Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?**

    FSANZ already perform useful functions in these areas. It makes sense to legitimise these functions if there is some regulatory barrier for them continuing.

25. **Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?** *[Option 2, Component 5 Foster new approaches to working with other agencies, with a focus on intelligence-sharing]*

    -

26. **Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ**?

    -

27. **Would the impact of pursuing Option 2, Component 6 represent a positive, negative, or neutral outcome for your sector?***[Option 2, Component 6 Streamline FSANZ's governance and operations]*

    Reference Q17. If decision making is delegated to the FSANZ Board then streamlining the Board may not be a good idea.

    Food regulation is a complex area with a range of highly contested issues and a need to balance 'wealth creation' and 'health protection' across two countries. The FSANZ Board needs to be large enough to ensure balanced representation.

    If a smaller, and more skills-based, Board was to be adopted, then very careful process around conflicts of interests would need to be included. Retaining a larger Board helps to balance out potential conflicts of interest. Diversity is a recognised advantage in all decision-making processes even if it becomes less efficient.

    DoH Tasmania support the FSANZ Board moving to virtual meetings.

28. **What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?**

    -

29. **Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?**

    -

30. **Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.**

    -

31. **Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?**

    Cost recovery fees need to be able to be retained by FSANZ to ensure core funds are used to progress Government business.

    Cost recovery fees need to be sufficient to cover industry, market-driven applications.

FSANZ needs to remain an independent scientific body. If cost recovery from industry is included in the model there needs to be a high degree of management related to potential, perceived or real conflicts of interest to preserve the independent scientific integrity.

FSANZ is already seen by some external stakeholders as 'too close to industry'. The risk of this reputation being compromised further could lead to a lack of trust in the food regulatory system.

32. What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

See Q31. Loss of FSANZ's independent scientific integrity and loss of trust in FSANZ impacts negatively on all stakeholders.

33. How often do you currently engage with the food regulation system through making applications to change food standards?

-

34. **What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system**?

- Capacity to respond meaningfully to the volume of work.
- Out-dated standards that impede regulatory action.

35. Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

-

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? *[Option 3 Component 1: FSANZ to coordinate food incident and food recall responses]*

FSANZ currently take a lead role in coordinating recalls and food incidents in line with the food recall and national food incident response protocols. This is a well established function for FSANZ and should be retained.

37. Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

-

38. Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

-

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector? *[Option 3: Component 2: FSANZ to give greater guidance on food standards]*

There is value in FSANZ giving greater guidance on food standards.

Building a library of binding interpretations and statements of intent has merit and would assist smaller jurisdictions such as Tasmania and promote consistency across the system, providing such actions are developed in close collaboration with state and territory (and NZ) regulators.

FSANZ working with industry to prepare evidence dossiers is not a good use of public funding. This is an industry responsibility. However, FSANZ providing guidance to industry on expects levels of evidence and assessing evidence would be valuable.

40. **Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?**

    -

41. **Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?**

    -

42. **Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?** *[Option 3: Component 3: FSANZ to take on enforcement role]*

    Option 1 FSANZ taking on limited enforcement activities specific to select food standards has merit. Especially in relation to some aspects of Chapters 1 and 2 such as health claims, the Health Star Rating system (should this become mandatory) and any future standards that incorporate self-substantiation. Such standards require a high level of specialist expertise and capacity which is not always readily available at state/territory level, especially in the smaller jurisdictions.

    Option 2 –Food safety management is best regulated at a state/territory or local Government level and undertaken by those with local knowledge and relationships. There is a risk FSANZ would end up focussing on the national food industries at the expense of small to medium businesses and the risk of food safety in rural areas could be seriously jeopardised.

    To legislate for FSANZ to have limited enforcement activities specific to identified food standards (perhaps some of the Chapters 1 and 2 standards) and agreed to by Food Ministers has merit. There may be lessons from consumer law where dual powers are enacted, with the national level regulating national issues and the states and territories dealing with local issues.

43. **Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?**

    Enforcement and monitoring in Tasmania is undertaken at both the State and Local Government level.

    At State level there is roughly one FTE directed to enforcement and monitoring in the Department of Health, noting this is not a defined FTE but a part role of several officers who take on other related roles, and three FTEs in the Department of Primary Industries, Parks, Water and the Environment.

    At a local government level it is estimated about 30% of Environmental Health Officers time is directed to food regulation enforcement and monitoring activities which equates to approximately 15 FTE (30% of 50 FTEs).

    There is very little focus at State and local level on Chapter 2 standards.

44. **Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?** *[Option 3: Component 4: Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage]*

    Australia and New Zealand have the potential be world leaders in food standards development. It may not always be in the public health interest to adopt international standards.

    By way of explanation, Ministerial Policy Guidelines for Infant Formula require that substances added are not only safe but also efficacious. This principle was included in the Ministerial Policy Guideline to protect infants who are formula fed. It was specifically designed to protect caregivers from being misled as to the healthfulness of one infant formula product over another. This policy principle has met with resistance from industry, as it is at odds with other major international regulatory bodies such as the EU and the USFDA.

Whilst it makes sense to harmonise with international food standards, it is important that Australia and New Zealand retain the right to deviate where there is legitimate concern for public health and safety and potentially drive change globally.

45. Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Justification of the benefits and costs to public health and safety (long and short term) and public confidence in the system should be attempted for all four components across Tables 17-20.

46. What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

FSANZ generally has a reputation for high-level independent scientific assessment.

FSANZ Act amendments related to cost recovery from industry need to:

- protect the progress of Government business (i.e. proposals are not jeopardised by paid industry applications)
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The scientific integrity and independence of FSANZ is an essential element of protecting public confidence in the system and must be retained and valued.

48. Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Ensuring public health (both long and short term), safety and public confidence in the system remain the over-arching drivers of the system. Food Ministers need to retain over-arching decision making even if some decision-making functions are delegated to senior jurisdictional officials or FSANZ.

Alignment with Aspirations

49. Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

The Aspirations suggest the vision for the food regulatory system is *A world-class collaborative food regulatory system focussed on improving and protecting public health and safety.*

DoH Tasmania recommends the draft Aspiration's vision should extend to ensuring public confidence in the system and be clear that public health includes both short and long-term health and read as follows:

> *A world-class, collaborative food regulatory system focussed on improving and protecting public health*, safety and public confidence in the system.*
>
> **Includes both short and long-term health implications*

The proposed policy solutions need to focus on establishing a regulatory environment with a primary goal of protecting public health (both short and long-term health), safety and public confidence in the food system.

It is not clear how the proposed policy solutions will achieve this. Further analysis of how the proposed policy solutions will contribute to the over-arching vision is warranted.

Supplementary information

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