

# Aspirations for the food regulatory system

## Consultation paper

Prepared on behalf of the Food  
Regulation Standing Committee  
23 November 2020

mpconsulting ™

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### Making a submission

This consultation paper has been prepared as a basis for stakeholder consultation on aspirations for the food regulatory system to inform broader [modernisation of the system](#).

We are seeking to consult widely and engage with individuals and organisations involved in all aspects across the food regulatory system. This includes engagement with:

- consumers and consumer representative organisations
- public health professionals and researchers
- industry bodies involved in each part of the food supply chain (including primary producers, manufacturers, distributors, suppliers and retailers)
- stakeholders from local, state and territory and Australian and New Zealand governments.

Your feedback on this consultation paper is invited. Feedback may be submitted via the Department of Health's [Consultation Hub](#). Comments must be received no later than **midnight 22 January 2021**.

Responses and submissions to the online survey will be closely considered and used to inform the direction for future reforms of the food regulatory system for consideration by governments.

Thank you for your interest and we look forward to receiving your comments.

## Context

### Reform of the food regulatory system

In March 2020, the Australian New Zealand Ministerial Forum on Food Regulation (the Forum) endorsed an implementation plan for an ambitious reform agenda for the food regulatory system aimed at ensuring the system remains strong, robust and agile into the future. The reform agenda is being progressed through a number of interconnected projects. This consultation paper relates to Stage 1 of the review of the intergovernmental [Food Regulation Agreement](#) (FRA), highlighted in yellow below.

<b>Review of the FRA</b>	<p><b>Stage 1:</b> describe aspirations for the food regulatory system to provide strategic direction for all reform projects, including Stage 2 of this project.</p> <p><b>Stage 2:</b> review the FRA to create a new foundational document to underpin the food regulatory system.</p>		
<b>Jurisdictional consistency</b>	Identify the key areas of inconsistency in food regulatory approaches based on the impacts on industry and government.	<b>Operations</b>	Develop and implement new operational processes to support the system’s governance.
<b>Review of the Food Standards Australia New Zealand Act 1991 (FSANZ Act)</b>	Review the effectiveness of the FSANZ Act and the operations and responsibilities of FSANZ.		

While these projects are being progressed in parallel (with separate consultation processes focusing on different elements of the system), the outcomes of each of the consultation processes will be drawn together to inform decisions of the Forum and drive the ongoing continuous improvement of the food regulatory system.

The outcomes of stakeholder consultation regarding the aspirations for the food regulatory system outlined in this consultation paper will inform the strategic direction for each of the above reform projects.

### Purpose of this consultation paper

To set the overarching direction for these reforms, we are seeking to understand stakeholders’ aspirations for a modernised food regulatory system. To this end, this paper:

- broadly describes some of the challenges and opportunities facing the food regulatory system over the next 20 years

- sets out the objectives and scope of the collaborative Australia and New Zealand food regulatory system
- proposes a set of aspirations for the food regulatory system and some associated high level actions on which we are seeking stakeholder comment.

**Stakeholder feedback is primarily sought on these aspirations and high level actions.** Following consideration of stakeholder feedback, the aspirations and actions will be further refined and provided to Ministers for agreement. Once a final vision for the future of the food regulatory system has been agreed, stakeholders may be further consulted on the detail and implementation of individual actions.

#### **Important note**

The matters outlined in this consultation paper have been identified based on the outcomes of previous reviews, review of international food regulatory systems and consultation with the Food Regulation Standing Committee (the FRSC) and others. Proposed aspirations and high level actions are intended to prompt stakeholder input on the broad principles and parameters for reform which will, in turn, inform next steps.

## Challenges and opportunities facing the broader food ecosystem

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While Australia and New Zealand's collaborative food regulatory system has largely stood the test of time, its framework is now over 20 years old. The food sector is rapidly changing, with significant opportunities and challenges facing Australia and New Zealand over the next 20 years:

- new technologies are being utilised in farming and processing, with implications for food safety and consumer acceptance of food products (particularly where the technologies pose ethical challenges or impact ecological sustainability)
- new technologies are also changing the way foods are offered to consumers (including through increasing availability of online purchasing, pre-prepared meals in supermarkets and food delivery options)
- awareness of climate change and the impact of food production on the environment is influencing consumer diets and product choices
- changes to natural resources, arable land and a loss of biodiversity present opportunities for more sustainable food production
- increasingly health, ethically and socially conscious consumers are paying more attention to their food choices and are seeking more personalised food options
- poor nutrition and obesity continues to impact on public health and highlights the need to reduce lifestyle-related illnesses
- risk of restricted availability and affordability of healthy foods, particularly for the most vulnerable populations and a growing need to ensure equitable access to safe, nutritious and culturally appropriate foods
- increasingly digital supply chains providing visibility of foods from their point of origin right through to the consumer
- new opportunities to improve product quality and reduce food waste
- changing expectations as a result of COVID-19, with the potential for disruption to traditional trade relationships.<sup>1</sup>

There is a need to clarify the role of Australia's food system and to better position the collaborative food regulatory system to meet these challenges and opportunities. There is also a need to continuously improve the food regulatory system in line with stakeholder expectations and to ensure that it remains best practice. Various reviews over the past decade have made suggestions for improvement, including to ensure that the system is strong, agile and responsive.

We are not alone in seeking to improve our food regulatory system. Other countries (including [Canada](#) and the [United States of America](#)) have recently modernised (or are in the process of modernising) their systems, including to:

- ensure regulation is proportional, based in risk assessment and data analysis

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<sup>1</sup> New Zealand Food Safety Ministry for Primary Industries, November 2019, [A Strategy for New Zealand Food Safety 2019-2024](#). Australian Government Department of Agriculture, Fisheries and Forestry, [National Food Plan, Our food future](#). Deloitte for Uber Eats, July 2019, [Future of food](#). United States Food and Drug Administration, 2020, [New Era of Smarter Food Safety](#).

- change the way regulation is monitored and enforced to improve consistency and reduce unnecessary regulatory burden
- focus on prevention and embedding a healthy food safety culture across the supply chain
- improve traceability and responsiveness to food safety concerns, including through use of technology
- enhance partnerships with stakeholders, including regulatory partners and regulated bodies.

**Consultation question**

1. What other key challenges and opportunities are facing the food system?

## Objectives and scope of the food regulatory system

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### Objectives of the food regulatory system

Before identifying the aspirations of the food regulatory system, it is important to consider the existing objectives of the system and whether they remain fit-for-purpose into the future.

The objectives of the food regulatory system are described differently in various documents.

The [Overarching Strategic Statement](#) (OSS), which was agreed by Ministers in 2017 articulates the system objectives:

- protect the health and safety of consumers by reducing risks related to food
- 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 and also for the general economic benefit of Australia and New Zealand.

In contrast to the objectives outlined in the OSS:

- the **FRA** includes a more limited description of the objectives – ‘providing safe food controls for the purpose of protecting public health and safety’
  - While other matters are set out in the FRA as objectives, these relate to how the system should be implemented (in line with the principles of best practice regulation), not what the system is trying to achieve as an outcome.
  - For example, the FRA also refers to: ‘reducing the regulatory burden on the food sector’; ‘facilitating the harmonisation of Australia's domestic and export food’; ‘providing cost effective compliance and enforcement arrangements’; ‘providing a consistent regulatory approach’; ‘supporting harmonisation of food standards’, etc.
- the objectives described in the **FSANZ Act** focus on ensuring ‘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’ (FSANZ). It also sets out the goals of FSANZ, which include ‘a high degree of consumer confidence in the quality and safety of food produced’, ‘the provision of adequate information relating to food to enable consumers to make informed choices’, etc.
- the [Joint Food Standards Treaty between Australia and New Zealand](#) sets out the objectives of the agreement itself (rather than of the broader food regulatory system), i.e. to reduce unnecessary barriers to trade, adopt a joint system for the development and promulgation of

food standards, provide for the timely development, adoption, and review of food standards, facilitate the sharing of information, etc.

## Scope of the food regulatory system

For the most part, the scope of the food regulatory system is defined by the system's objectives. However, stakeholders have differing expectations regarding how far the food regulatory system's span of control should extend to achieve these objectives. Expectations of the system have expanded over time, including where the food regulatory system has intervened to manage certain risks, respond to broader policy challenges and meet consumer expectations.

For example, drawing on the language in the OSS:

- in relation to **protecting the health and safety of consumers by reducing risks related to food**, there is broad agreement that this should continue to be a primary objective.
  - The key challenge in relation to this objective is different expectations about the way that risks should be managed, and the role of regulation compared to other strategies for managing risk and driving health protection.
- in relation to **enabling consumers to make informed choices**, there is little contention around the importance of the food regulatory system supporting consumers to understand food safety and storage information and food composition (for example, through use by dates, allergen warnings and ingredients labelling).
  - Where the debate lies is how far the system should extend to support consumers to make informed choice about things that are important to them. For example, in relation to animal welfare, environmental sustainability and ethical issues.
- in relation to **supporting public health objectives**, there is broad agreement that the food regulatory system should focus not just on reducing acute food safety risks but also on addressing chronic risks (for example, by guiding consumers towards healthier choices through nutrition information panels and the Health Star Rating (HSR) system).
  - Where the debate often lies is whether food regulation is the most appropriate (efficient and effective) way to achieve the public health objective. For example, in the context of the HSR system, the debate was not whether the food regulatory system should be used to promote public health but rather whether the HSR system was the most efficient and effective way to do so, taking into account not just public health impact but also cost to industry, desire for international harmonisation, etc.
- in relation to **enabling the existence of a strong, sustainable food industry**, it is broadly recognised that a strong and sustainable food industry is integral to Australia and New Zealand's economic and social prosperity, and that food safety (and food security more broadly) cannot be achieved without a strong food industry.
  - The contention in this case is around whether this should be an express objective of the food regulatory system or whether the system should simply *not impede* this outcome (or do so only to the extent necessary to protect the health and safety of consumers). There is

also tension around how actively the food regulatory system should support this objective, including whether the system should simply minimise unnecessary regulatory burden on industry (and in so doing support a sustainable sector) or whether the system should explicitly design interventions that support industry and trade.

### Do the objectives and scope of the food regulatory system remain fit for purpose?

The OSS was developed through extensive stakeholder consultation and agreed by Ministers in 2017. Given the recent development of the OSS and its continued alignment with international food regulatory systems and stakeholder expectations, it is proposed that the objectives outlined in the OSS should be retained and reflected in a revised FRA.

While some stakeholders have suggested further defining terms such as ‘informed choice’ and ‘public health’ or formally prioritising these objectives, this is not likely to assist in resolving tensions regarding the extent to which the food regulatory system should advance each objective.

While it is acknowledged that stakeholders will continue to have different interpretations regarding some aspects of these objectives and varying perspectives as to the relative importance of each objective, the focus moving forward should not be on setting ‘harder boundaries’ to determine what is in or out of the food regulatory system’s span of control, but on enabling the system to better manage any tensions regarding how objectives are achieved in practice.

This includes establishing more effective mechanisms and pathways for managing issues that intersect with other regulatory systems and identifying the most appropriate (targeted and proportionate) response to manage different risks or issues. To do this, we need to ensure 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.

#### Consultation questions

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?

## Aspirations for the food regulatory system

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### Proposed aspirations for the food regulatory system and actions to pursue these

While Australia and New Zealand continue to have a strong food regulatory system, with many positive attributes, the system needs to keep pace with changes in food chemistry and nutrition, food technology and food product innovation. The system also needs to adjust to meet the changing expectations of consumers who are seeking more from their foods, including increased visibility of information about their foods.

Many countries have recently undertaken (or are in the process of undertaking) significant reforms to modernise their food regulation systems to meet future challenges and opportunities. In July 2020, the United States Food and Drug Administration (FDA) announced its [New Era of Smarter Food Safety Blueprint](#), noting:

*“The world around us is changing rapidly; many believe we will see more changes in the food system over the next 10 years than we have in decades. Foods are being reformulated; there are new foods, new production methods, and new delivery methods; and the system is becoming increasingly digitized. To keep pace with this evolution, FDA is taking a new approach to food safety, leveraging technology and other tools to create a safer and more digital, traceable food system. Smarter food safety is about more than just technology. It's also about simpler, more effective, and modern approaches and processes. It's about leadership, creativity, and culture”<sup>2</sup>.*

Ministers have agreed to undertake an ambitious reform of the food regulatory system and are seeking stakeholder views on their aspirations for a modernised system. This is an opportunity for stakeholders to consider what changes will be needed to ensure the sustainability of the system moving forward and ensure the system has a strong foundation from which to meet the challenges of the future.

The below table includes a set of proposed goals or aspirations, which are supported by a number of high level actions.

It is recognised that many of the actions in the below table intersect with others or overlap with reforms being progressed through other processes (such as the FZANZ Act review). Many of these actions will also rely on the support and involvement of a range of stakeholders and require further development to determine how the action will be taken forward. However, at this stage, we would like to hear from stakeholders about whether these broad areas of focus align with your aspirations for the food regulatory system. This is an opportunity for stakeholders to shape Australia and New Zealand’s collaborative food regulatory system to ensure it remains resilient, responsive and best practice into the future.

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<sup>2</sup> United States Food and Drug Administration, 2020, [New Era of Smarter Food Safety](#).

Goals/aspirations	High level actions
<p><b>Strengthen the strategic leadership of the system</b></p>	<ul style="list-style-type: none"> <li>• Strengthen capacity of governments to strategically lead and steward the food regulatory system</li> <li>• Build strong partnerships across regulatory systems to jointly identify regulatory priorities and resolve challenging issues</li> <li>• Proactively monitor and regularly review the performance of the food regulatory system to drive continuous improvement</li> </ul>
<p><b>Reorient the system from being focused on ‘food regulation’ to focus on achieving shared objectives (where regulation is one tool used to achieve the objectives)</b></p>	<ul style="list-style-type: none"> <li>• Re-envisage system objectives as being shared objectives of all stakeholders, with each responsible for different parts of an integrated strategy to manage risk and drive outcomes</li> <li>• Normalise the use of a wide range of regulatory and non-regulatory tools to achieve system objectives</li> <li>• Undertake effective risk assessment to inform the identification of interventions that are risk proportionate and enable innovation</li> <li>• Build relationships with other regulators and stakeholders to develop innovative non-regulatory or co-regulatory approaches</li> <li>• Actively engage stakeholders to promote and embed a safe and healthy food culture across the supply chain</li> <li>• Provide clear and consistent guidance and communications where regulatory requirements are introduced or changed</li> </ul>
<p><b>Expand the range of tools available to monitor compliance and respond to non-compliance (coordinated, targeted and efficient)</b></p>	<ul style="list-style-type: none"> <li>• Revise Australia’s Model Food Provisions to include a broader range of modern regulatory tools and to ensure common tools are available in respect of the whole supply chain (including primary production and processing)</li> <li>• Centralise or coordinate monitoring activities where appropriate to improve consistency and efficiency of compliance action (for example, in relation to health claims)</li> <li>• Drive the development of approaches to more efficiently monitor compliance and enable industry to demonstrate compliance, including for example:             <ul style="list-style-type: none"> <li>– through better use of technology and data</li> <li>– by recognising the outcomes of third party audits where appropriate</li> </ul> </li> <li>• Improve consistency in the implementation of policies and standards at national and bi-national settings and with imported/exported foods</li> </ul>

Goals/aspirations	High level actions
<p><b>Improve feedback loops to inform regulatory and non-regulatory approaches and responses</b></p>	<ul style="list-style-type: none"> <li>• Measure and analyse the impact of the system as a whole, and of specific interventions, to understand performance and drive continuous improvement</li> <li>• Use data visualisation across jurisdictions to enable identification of risks, trends and outliers, nudge industry behaviour and inform data-driven decisions</li> <li>• Regularly review food standards in response to emerging issues, stakeholder feedback and data analysis</li> </ul>
<p><b>Better involve stakeholders in identifying priorities and developing integrated strategies</b></p>	<ul style="list-style-type: none"> <li>• Introduce formal structures to better enable expert advice to guide the system (from industry, public health, academic and consumer bodies and also from other government portfolios where required)</li> <li>• Establish processes to facilitate the development and recognition of industry-led guidance or codes of practice (operating within a clear authorising environment)</li> <li>• Better engage public health and consumer advocacy bodies to deliver key messages regarding consumer safety and public health</li> </ul>
<p><b>Improve regulatory responsiveness</b></p>	<ul style="list-style-type: none"> <li>• Clearly differentiate where particular responsibilities lie within the broader food system to enable focused and efficient decision-making, including by:               <ul style="list-style-type: none"> <li>– delegating decision-making responsibility for minor, technical decisions (unless Ministers request to discuss a certain matter) to enable Ministers to focus on matters of strategic importance</li> <li>– identifying efficient mechanisms to resolve contentious issues (and provide rapid advice to stakeholders) and exercising leadership to manage the interface with other regulatory systems</li> </ul> </li> <li>• Adopt a mechanism for improving international harmonisation</li> </ul>

**Consultation questions**

3. Is there anything missing from these aspirations and high level actions?
4. Are there any aspirations or high level actions that you disagree with and why?

## What will be the benefits of these actions?

### **How will these actions promote the health and safety of consumers, enable consumers to make informed choices and support public health objectives?**

To maintain a robust food safety system to meet future challenges, we need to have effective controls in place to reduce and monitor risks and to actively respond to issues. Improved use of data and technology will be fundamental to enable regulators to actively monitor food safety risks, analyse the efficacy of individual interventions and better understand the performance of the system as a whole. This will enable us to demonstrate to consumers, industry and others where the system is and isn't working well and drive continuous improvement.

A key focus of these aspirations and actions is to promote and embed a safe and healthy food culture right across the food system (from primary production to the consumer's plate). This will require food businesses to understand their role in the supply chain, identify the risks associated with this role and take responsibility for actively reducing and managing these risks. By re-envisaging system objectives as shared objectives of all stakeholders, food business are more accountable for reducing risks related to food, ensuring consumers are able to make informed choices, promoting healthy food choices and enhancing the nutritional qualities of foods.

By better enabling expert advice to guide the system and working more closely with public health and consumer advocacy bodies, we can enhance the information provided to consumers to promote safe food practices, healthy food choices and other, specific public health objectives. Well-informed consumers will also ultimately influence market behaviour.

Collectively these actions will enable us to demonstrate that our collaborative food regulatory system remains world class in managing risks to deliver safe and healthy foods.

### **How will these actions enable a strong and sustainable food industry?**

By drawing more strongly on industry advice (to inform priorities and also to develop industry compliance tools), we can better ensure interventions are grounded in an appreciation of the challenges facing food businesses and work collaboratively to develop solutions that both prioritise food safety and enable flexibility for food businesses to innovate and grow.

By encouraging the use of non-regulatory tools where appropriate and adopting a range of integrated, risk-proportionate strategies to support achievement of the system's objectives, compliance burden on industry will be reduced. Through investing in more coordinated, targeted and efficient tools to support monitoring and compliance, industry will more readily be able to demonstrate compliance.

The collaborative development of best practice guidelines will support food businesses to understand the intent of food standards and how these can be effectively implemented in different settings. Working towards more harmonised international standards will help to further remove any undue barriers to trade and support an internationally competitive food industry.

All of these actions will support modernisation of the system to ensure it remains robust and agile into the future, which will in turn continue to promote a strong and sustainable food industry.

**How will these actions help to resolve tensions with other regulatory systems?**

By building strong partnerships with other regulators, we can more collaboratively identify risks and develop innovative, holistic and targeted interventions that are best suited to manage each specific risk. Food regulators will take on a leadership role to identifying where issues are within scope of the food regulatory system or where other regulators are best placed to lead a response. We will work closely with regulatory partners and other stakeholders to resolve challenges, manage shared interests in the food regulatory system and respond to stakeholder needs.

## Next steps

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This consultation paper has been developed for the purpose of seeking high level stakeholder input to inform advice to Ministers regarding aspirations for the food regulatory system. These goals and actions are not intended to reflect a detailed work plan or to capture all of the issues facing the system. In developing recommendations to the Forum, we will also draw on the outcomes of other consultation processes underway (including consultation being undertaken to inform the review of the FSANZ Act and to identify areas of inconsistency in food regulatory approaches).

Stakeholder feedback is sought on the [proposed aspirations for the food regulatory system and high level actions](#) identified in this Consultation Paper.

Following consideration of stakeholder feedback, these aspirations and actions will be further refined and provided to Ministers for consideration. Once Ministers have agreed high level goals and actions, these will guide future reforms to Australia and New Zealand's collaborative food regulatory system to ensure it remains resilient, responsive and best practice into the future.

We invite you to complete the survey and/or make a submission through the Department's [Consultation Hub](#).