

# Consistency of food regulatory approaches

## Consultation paper

6 November 2020

mpconsulting ™

### **Making a submission**

This paper has been prepared to support stakeholders to provide feedback on:

- inconsistency in food regulatory approaches and the impact of this on business and others
- key areas of food regulation that would benefit from reform in order to reduce unnecessary costs associated with inconsistent regulatory approaches.

To assist stakeholders to provide feedback, a short survey has been developed and is available through the Department of Health's [Consultation Hub](#).

Stakeholders are invited to answer any of the survey questions and/or to provide a more detailed submission.

Survey responses and submissions must be received no later than **midnight 18 December 2020**.

Information from submissions will be used to inform a report to the Food Regulation Standing Committee (FRSC) but will not include information identifying individual businesses without the prior agreement of those businesses.

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

## What is the purpose of this consultation?

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In March 2020, the Australian New Zealand 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:

<b>Review of the Food Regulation Agreement (FRA)</b>	<p><b>Stage 1:</b> describe a vision for the future of the food regulatory system to provide strategic direction for reform and feed into Stage 2.</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 food regulatory system), the outcomes of each of the consultation processes will be drawn together to inform decisions of the FRSC and the Forum in relation to the future of the food regulatory system.

**This consultation process seeks stakeholder advice on areas of inconsistency in food regulation** (highlighted in the green box above) and the impacts of this on businesses and regulatory outcomes. Impacts might include adverse regulatory outcomes (for example, undermining food safety objectives, causing reputational damage to the food regulatory system, creating confusion for consumers, etc.) and/or creating adverse outcomes for food businesses (for example, in terms of cost, compliance burden, market disadvantage, lost opportunity, uneven playing field, duplication of effort, etc.).

Stakeholder advice is also sought on areas of duplication between the food regulatory system and related regulatory systems (such as consumer affairs, biosecurity, agriculture, therapeutic goods, etc.).

Case studies, examples and information about the impacts associated with any inconsistencies or areas of duplication will assist in informing priority areas for reform. This information is critical to enable governments to make evidence-based decisions regarding the future of the food regulatory system.

## How is consistency in food regulation currently supported?

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One of the objectives of the FRA is to provide a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures. Likewise, the Joint Treaty with New Zealand aims to reduce unnecessary barriers to trade between the two countries, including through a joint system for the development and promulgation of food standards.

There are currently a number of mechanisms aimed at supporting national and bi-national consistency of food regulation:

- The **Australia New Zealand Food Standards Code** (the Code) describes standards or requirements relating to food and food production. Chapters 1 and 2 (relating to labelling, food additives, contaminants and chemical residues, foods requiring pre-market clearance, microbiological and processing requirements, and food standards) apply in both Australia and New Zealand. Chapters 3 and 4 (relating to consumer food safety and primary production and processing) apply in Australia only; New Zealand has separate standards covering these matters.
- The **Model Food Provisions** provide a legislative basis for a 'substantially equivalent' national food safety regime and are used by each State and Territory as a basis for their food acts. Model Food Provisions are split into [Annex A](#), which are to be applied consistently and [Annex B](#), which may be varied by each jurisdiction as required.
- The **FRSC** coordinates policy advice to the Forum and aims to ensure policy decisions can be consistently applied nationally and bi-nationally.
- The **Implementation Subcommittee for Food Regulation** (ISFR) provides a forum for Australian and New Zealand food regulators to determine common approaches to implementing and enforcing food standards. The ISFR also produces guidelines to support consistency, for example the [Australia New Zealand Regulation Compliance, Monitoring and Enforcement Strategy](#), [National regulatory food safety auditor guidelines and policy](#) and [Principles for inspection of food businesses](#).

## What are some of the areas of inconsistency?

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While regulatory requirements are, for the most part, consistent nationally within Australia and (to an extent) bi-nationally across Australia and New Zealand, stakeholders and governments alike have recognised that areas of inconsistency or duplication can evolve and that there is value in continuing to streamline the system.

Areas of inconsistency or duplication that some stakeholders have suggested could be better addressed include:

- differing expectations of regulators as to how compliance is demonstrated, such that some businesses operating nationally need to adopt different approaches to demonstrating compliance. Some stakeholders have also described differing approaches to the recognition of inspection outcomes undertaken by third party auditors, noting that where inspection outcomes are not recognised, food businesses may be subject to duplicative inspections

- lack of readily accessible and consistent advice from food regulators across jurisdictions about critical food safety issues (such as the use of raw eggs in hospitality venues). Stakeholders have identified that the lack of clear and consistent guidance can create uncertainty for food businesses and lead to differing approaches across jurisdictions
- different expectations between Australian jurisdictions as to how food businesses must meet certain outcomes specified in the Code, particularly in relation to food safety requirements. For example, different expectations in relation to the qualifications and requirements for food safety supervisors may mean that businesses operating venues across multiple jurisdictions need to establish different, potentially duplicative processes to evidence their compliance
- some Australian jurisdictions adopting more prescriptive requirements than those specified in the Code
- inconsistent approaches to reporting compliance information, for example:
  - some jurisdictions report non-compliance through public registers (such as the NSW Name and Shame List or the ACT Register of Food Offences)
  - some jurisdictions publish the results of hygiene and food safety inspections (through, for example, SA Health's Food Safety Rating Scheme or the NSW Scores on Doors program)
- potential differences in approaches to monitoring and enforcement between products being imported into Australia and domestically produced products
- inconsistent monitoring and enforcement of the nutrition, health and related claims standard, particularly with regards to self-substantiated health claims and the level of evidence required to demonstrate compliance. Stakeholders have expressed concern that this can undermine confidence in the system and provide an unfair advantage to food businesses making inappropriate claims in jurisdictions that do not as actively monitor and enforce the requirements
- different approaches to challenging policy issues resulting in delays to decision-making, for example in relation to the assessment of proposals, development of new standards and revision to existing standards (such as the current revision of the Regulation of Nutritive Substances and Novel Foods)
- different, specific requirements around menu board labelling and foods that can be sold in school canteens.

## **What further information is sought from stakeholders?**

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The purpose of this consultation process is to hear directly from industry, governments (particularly local governments and States and Territories) and others (such as third party auditors) about areas

of inconsistency or duplication that have potential to undermine food safety objectives or otherwise disadvantage or impose unnecessary regulatory burden on businesses.

By looking across sectors and hearing from a range of businesses, we hope to gain a sense of the significance of some of these issues. Evidence regarding the impacts of any inconsistencies is key to inform government decisions on priority areas for improvement moving forward.

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

Please note that this consultation process is specifically focused on inconsistent regulation implementation and enforcement across Australian States and Territories or between Australia and New Zealand. Separate consultation processes are being conducted in relation to other matters (for example through the [review of the FSANZ Act](#)).