

Response ID ANON-E8PZ-W8RK-K

Submitted to Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - Impact Analysis
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Introduction

Have you read the Impact Analysis?

Yes

Demographics

What is your full name?

Full name:
Jennifer Rae McCann

Are you answering on behalf of an organisation?

Yes

What is the name of your organisation?

Organisation name:
Infant and Toddler Foods Research Alliance

Which sector do you represent?

Public Health

Other: :
IPAN - Institute for Physical Activity and Nutrition, Deakin University

What country are you responding from?

Australia

Other: :
Australia

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

Yes

What is your email address?

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Section 3 - The problems to solve

Section 3 - The problems to solve (Methodology)

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

Free text box, no character limit:

The main concern with the current system is that it insufficiently protects consumers from long-term health impacts and preventable diet-related diseases, including health impacts that relate to a degrading environment (such as climate change and biodiversity loss) and the impact of the food system on the environment. Whilst this is the primary objective of FSANZ, it is not mentioned in the IA, leaving the methodology flawed as it fails to factor in this important bi-directional relationship between public health and the natural environment.

The approach undertaken to identify and prioritise policy problems has not been well documented and little detail is available to explain processes, inputs and assumptions underpinning problem identification and prioritisation.

We are disappointed that the current methodology fails to identify what we see as the key policy problems that need to be solved. In its current form, the Act does not enable the food regulatory system to meet its two primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. This was raised by the

majority of public health and consumer organisations in their submissions on the Draft Regulatory Impact Statement (2021) and it has still not been addressed sufficiently. The methodology of just incorporating a definition of public health appears an attempt to minimise external stakeholder confusion about FSANZ's existing roles and operations. An expanded definition is necessary, but it is insufficient to deal with the actual policy problem. This is evident in the analysis of each subsequent policy problem and in each option put forward for reform, including most significantly the risk-based framework and the cost benefit analysis. To help address this we support the development and incorporation of a Public Health Test (see response to the question in relation to other initiatives under component 2.1 for more details).

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

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

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

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

Free text box, no character limit:

As highlighted in Section 3, the Act is designed to "address negative externalities such as where the actions of some stakeholder groups create costs or harm for other people" and "address information asymmetries by ensuring that consumers have adequate information and consequently are able to make informed choices which promotes high quality production". Two of the negative externalities that the Act does not include via impact analysis are food systems security and vulnerability to environmental change/ impact on the environment (including climate change and biodiversity loss). This feedback has been provided throughout the Review processes via expert stakeholders including academics and civil society organisations in Australia and New Zealand and is given lip service in feedback outlined in Section 7 of the Impact Analysis. We note that consideration was given to "The objectives of FSANZ could also be extended to promote food sustainability" but this was excluded from further analysis. No reasoning has been given for this decision. The food regulatory system, as a major component of the broader food system, has the opportunity to play an important role in ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and domestic Nationally Determined Contributions are fulfilled, and safeguarding food safety, security and sustainability. It would further allow FSANZ to better align with other government strategies, such as Australia's Strategy for Nature (our national biodiversity strategy) and the intergovernmental Kunming-Montreal Global Biodiversity Framework. Public health is not possible without a healthy and thriving natural environment. Climate change and environmental degradation is considered to be the greatest emerging threat to public health (1). Food systems are responsible for one-third of global greenhouse gas emissions, approximately 70% of freshwater use, are the largest driver of land and marine ecosystem biodiversity loss, threaten freshwater and marine ecosystems through the overuse of nitrogen and phosphorus, and accounts for 38% of global land use (2-5). Food production is destined for collapse if environmental issues are not addressed.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability (6) and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. This means that in order to be current, and fit-for-purpose the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

(1) Watts, Nick et al. 2018 The 2018 report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come. *The Lancet* 392(10163), 2479 - 2514

(2) Crippa, M., Solazzo, E., Guizzardi, D., Monforti-Ferrario, F., Tubiello, F.N., Leip, A., 2021. Food systems are responsible for a third of global anthropogenic GHG emissions. *Nat. Food* 2 (3), 198–209.

(3) Earthscan 2007 *Water for Food, Water for Life: A Comprehensive Assessment of Water Management in Agriculture*. International Water Management Institute, London, UK.

(4) Benton, T.G., Bieg, C., Harwatt, H., Pudasaini, R., Wellesley, L., 2021. *Food System Impacts on Biodiversity Loss. Three Levels for Food System Transformation in Support of Nature*. Chatham House, London.

(5) Diaz and Rosenberg 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321, 926–929

(6) James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892.

Section 3 - The problems to solve (Ratings)

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

No

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

Free text box, no character limit:

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

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

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

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

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

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

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

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

This problem should be considered low-moderate magnitude (1-2). The impact and extent of sub-problems 1, 2 and 4 are largely limited to FSANZ itself, affect only a very small number of products and businesses, and do not go to the object of the Act which is to ensure a high standard of public health protection (relating to short and long term consequences). There are no proposed reforms in the IA that will improve public health and consumer outcomes.

We also recommend that sub-problem 3 be removed from this policy problem 2 and added to policy problem 3 as constraints due to inefficient resourcing relates to inefficiencies in operations.

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

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

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

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

Section 5 - Options for reform

Component 2.1

Component 2.1.1

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

Yes

Additional comments (optional):

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

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

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

We support the use of the definition in Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures with the following amendment (in capitals): "all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short-term or long-term, including preventable diet-related, disease, illness, and disability, THE DIET-RELATED RISK FACTORS FOR THEM AND FOOD SECURITY AND SUSTAINABILITY, as well as acute food safety concerns."

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

No

Additional comments (optional):

The Ministerial Policy Statement, which has been in effect for 10 years, already requires FSANZ to consider long-term health. The revised definition would simply reflect those requirements in the Act, where they should be. The inclusion of the definition simply clarifies categorically for external stakeholders FSANZ role and will not change the requirement that they consider long-term health.

We note the Cost Benefit Analysis includes the following as a qualified cost to industry of this reform "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade." We do not agree with this inclusion. We strongly disagree that confirming FSANZ's already legislated priority role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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

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

Positive

Additional comments (optional):

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

Component 2.1.2

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

Yes

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

Free text box, no character limit:

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

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

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

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

Component 2.1.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

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

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

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

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

Yes

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on possible provisions and language changes that are culturally appropriate, and beneficial to broader promotion of Indigenous culture and knowledge within the food regulatory system.

Component 2.1

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

Yes

Free text box, no character limit:

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

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

To ensure this, we strongly suggest that amendments are made to the Act to establish a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews.

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

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply;
- b) The environmental effects from the food supply; and
- c) Estimated benefit of change to the food supply (based on a) and b) above) from the work under consideration.

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as determined by the approach recommended by Dickie et al (1)
- b) Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines, noting that the upcoming dietary guidelines are likely to consider sustainability impacts;
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease, i.e. ultra-processed foods and processed foods high in salt and added sugars;
- d) Assess the impact on the burden of disease attributable to the food system;
- e) Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis (including costs associated with environmental issues, with climate change and biodiversity loss as key priorities);
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children.

It will also be important to educate existing staff within FSANZ who regularly make decisions regarding the definition of public health and, in particular, the ramifications of FSANZ decisions on longer term health, food security and sustainability. We have experience with our concerns often falling on deaf ears or being informed that these longer term impacts are not within FSANZ's remit.

(1) Dickie, S.; Woods, J.; Machado, P.; Lawrence, M. A novel food processing-based nutrition classification scheme for guiding policy actions applied to the Australian food supply. *Front. Nutr.* 2023, 10, 1071356

Component 2.2

Component 2.2.1

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

No

Free text box, no character limit:

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

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

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

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

- The risk criteria and assessment matrix
 - The organisations whose assessments would be used as a basis for minimal assessment approach
 - What outcomes would be expected for public health from such an approach
- This separate consultation should commence immediately and be developed simultaneously with the FSANZ Act Review.

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

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

Free text box, no character limit:

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

The information given is too limited to answer this question. The IA provides extremely limited information about the risk-based framework.

Component 2.2.2

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

No

Free text box, no character limit:

- There is no assurance that accepting risk assessments from international jurisdictions would ensure standards would be aligned 'up' (to international standards that represent the best outcomes for public health and consumers) rather than 'down'. The IA does not provide assurance that public health considerations and impact has been properly assessed.
- Food standards should only be harmonised with international standards where those standards meet a Modified Public Health Test.

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

Would enabling (but not compelling) FSANZ to automatically recognise appropriate international standards support more risk-based and proportionate handling of applications and proposals and improve efficiency and effectiveness? How so?

No

Free text box, no character limit:

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

It is unclear how this approach would work in practice. It is unclear what 'enabling FSANZ to automatically recognise' means? The pathways described in the IA note that FSANZ would still need to go through some decision-making process and it is unclear what these processes would be. We suggest that a harmonisation program is developed and consulted on that sets out what should be harmonised and why, including consideration of the Modified Public Health Test.

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

No

Free text box, no character limit:

From the information provided, it appears that the minimal check pathway would only apply to applications and not proposals. This risks further prioritising commercial decisions at the potential expense of public health, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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

No

Free text box, no character limit:

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

Negative

Free text box, no character limit:

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

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

We would require further examination and publication of real (current and previous) applications and proposals against the draft criterion and decisions made to better assess the risk and benefits of this approach.

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

No

Free text box, no character limit:

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

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

Component 2.2.3

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

No

Free text box, no character limit:

We do not have enough information regarding the risk framework to support this option at present.

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

Free text box, no character limit:

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

If the proper consultation processes have been completed and risk has been determined accurately using the Modified Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays, meanwhile ensuring current processes are followed for decisions that are not low risk.

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

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

Free text box, no character limit:

A qualified, conflict-of-interest free (i.e. no connection to industry) public health practitioner who has experience with the application of the Modified Public Health Test, ability to compile the necessary information and make a sound judgment based on the available information.

Component 2.2.4

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

No

Free text box, no character limit:

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

We note that without meaningful consultation there is a real risk of the commercialisation and potential for exploitation of traditional foods by non-First Nations and non-Māori peoples.

There are also considerations of environmental aspects such a habitat damage, ecosystem disturbance and animal/plant population extinction if these foods were to be introduced commercially without appropriate regulatory support.

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

Prefer not to respond / I don't know

Free text box, no character limit:

We suggest FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether guidance is necessary or how they may be better supported to engage with the food regulatory system more broadly.

Component 2.2.5

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

Yes

Free text box, no character limit:

We suggest the Modified Public Health Test is used to determine which reviews are undertaken and how they are prioritised.

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

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

Yes

Free text box, no character limit:

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

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

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

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

Component 2.2.6

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

In our opinion there are no matters that would have been better solved by a Code of Practice.

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

Free text box, no character limit:

N/A

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

Negative

Free text box, no character limit:

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

See:

- Ngqangashe, Y., S. Friel, and A. Schram, The regulatory governance conditions that lead to food policies achieving improvements in population nutrition outcomes: a qualitative comparative analysis. *Public Health Nutr*, 2021. 25(5): p. 1-11.

Ngqangashe, Y., et al., A narrative review of regulatory governance factors that shape food and nutrition policies. *Nutrition Reviews*, 2021. 80(2): p. 200-214

Component 2.2

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

Yes

Free text box, no character limit:

Timeframes for proposals.

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

We strongly recommend that statutory timeframes for proposals are introduced into the Act. We acknowledge that proposals are broader, more complex

and require more nuanced consultation than applications, but this should not result in proposals extending over many years. Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. We recommend a stipulated timeframe for completing proposals to create an incentive and a more balanced approach to progressing these important reforms.

This should allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making, particularly if new or other resources can be dedicated to this and/or other sources of data and expertise can be drawn upon. Some examples:

- P1010 Review of Formulated Supplementary Sports Foods – commenced June 2019, consultation paper 2 completed Sept 2023, with no further timeline noted on FSANZ workplan.
- P1028 Infant Formula Products – commenced July 2013, numerous waiting periods between consultation periods and now final ministerial notification is for late June 2024.
- P1047 Review of regulatory nutrient reference values – Proposal prepared in August 2018 – and progress has been delayed due to other priorities.
- P1049 Carbohydrate and sugar claims on alcoholic beverages – commenced late August 2018 – proposed notification to ministers December 2024.
- P1056 Caffeine Review – commenced early June 2021 and end of consultation period March 2023 with no further dates for progress.

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

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

Component 2.3

Component 2.3.1

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

Yes

Free text box, no character limit:

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

In relation to the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills we note that for adequate First Nations and Māori representation on the FSANZ Board specific positions for First Nations and Māori people should be created.

We would also support the engagement of food systems sustainability expert on the board, so that sustainability can be appropriately and correctly considered in assessments.

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

No

Free text box, no character limit:

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

Component 2.3.2

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

Positive

Free text box, no character limit:

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

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

Component 2.3.3

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

Positive

Free text box, no character limit:

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

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

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

Free text box, no character limit:

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

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

Free text box, no character limit:

N/A

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

Negative

Free text box, no character limit:

Compulsory fees would not result in a level playing field for all of industry and are likely to result in the risk of industry capture. Consumer and public health groups are also unlikely to be able to afford fees charged for progressing an application. Compulsory fees do not provide as secure a funding model as an industry wide levy for resourcing FSANZ.

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

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

No

Free text box, no character limit:

We do not support cost recovery from industry initiated entrepreneurial activities. We note that Best Practice Element 3 of the IA highlights that cost recovering services frequently represent a minority funding stream for standard-setters. This sort of activity will also likely negatively impact FSANZ's independence. Furthermore, it is also not FSANZ's role to assist with entrepreneurial activities.

Component 2.3.4

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

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

Prefer not to respond / I don't know

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

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

Other

Free text box, no character limit:

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

Negative

Free text box, no character limit:

How would this need to be implemented to be successful?

Free text box, no character limit:

Component 2.3

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

Prefer not to respond / I don't know

Free text box, no character limit:

Component 2.4

Component 2.4.1

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

Prefer not to respond / I don't know

How would this need to be implemented to be successful?

Free text box, no character limit:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system but note that this already occurs. FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ workload and priorities. This mechanism is already in place and available to FSANZ under Option 1, so there is no need to change legislation to allow this.

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

Free text box, no character limit:

The Modified Public Health Test should be used to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

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

Free text box, no character limit:

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

Component 2.4.2

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

No

Free text box, no character limit:

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

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

Free text box, no character limit:

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

Component 2.4.3

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

Yes

Free text box, no character limit:

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

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

Free text box, no character limit:

Collection of data is critical to monitor the work of the food regulatory system and the overall impact on public health nutrition, food security and sustainability outcomes. Data can help in identifying priorities, evidence-based development of policy options and the evaluation of implementation. Importantly, up to date consumption data will be critical in the assessment of proposals and applications, especially in ensuring public health is addressed.

We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand.

Data that should be collected and curated includes data on:

- Food supply
- Food composition
- Food sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Food security data
- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Component 2.4.4

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

Yes

Free text box, no character limit:

We support the sharing of information to support the development of the Food Standards Code, but do not support the introduction of international standards into the Food Standards Code, without the appropriate procedures for consultation.

What should be the focus of such information sharing arrangements?

Free text box, no character limit:

The information sharing should only form part of the initial background research required during standard development. Information sharing for this purpose is acceptable practice and differs greatly to the earlier questions regarding enabling FSANZ to automatically recognise appropriate international standards (which we oppose). Consideration for the Australia and New Zealand context is also required.

Component 2.4.5

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

Yes

Free text box, no character limit:

A Statement of Intent used to be a feature at the beginning of each food standard and it was helpful in understanding the reasoning for the Standard, and avoiding misinterpretations of the code. We would support the re-inclusion of statements of intent.

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

Free text box, no character limit:

No. The statement of intent should only relate to the FSANZ Priority Objectives - in relation to protection of public health and safety and to enable consumers to have sufficient information to make informed food choices.

Component 2.4.6

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

Prefer not to respond / I don't know

Free text box, no character limit:

There may be some benefit in FSANZ being able to provide additional interpretive guidance to industry, but where funding is scarce, this would be a lower priority.

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

Yes

Free text box, no character limit:

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

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

Component 2.4.7

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

Yes

Free text box, no character limit:

We support enhanced collaboration between FSANZ and jurisdictional enforcement agencies. Particularly if this leads to improved enforcement of standards that promote better public health outcomes.

Component 2.4

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

No

Free text box, no character limit:

Section 6 - Net Benefit

Section 6 - Net Benefit (Option 1)

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

Yes

Free text box, no character limit:

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

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

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

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

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

Free text box, no character limit:

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

What are the current delay costs to industry?

Free text box, no character limit:

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

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

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

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

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

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

No

Free text box, no character limit:

Data and expertise are available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health, particularly amongst public health and consumer groups. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

No

Free text box, no character limit:

Section 6 - Net Benefit (Option 2)

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

Yes

Free text box, no character limit:

See response above that includes recommendations for including costs/benefits to all stakeholder groups.

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

No

Free text box, no character limit:

Data and expertise are available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health, particularly amongst public health and consumer groups. We recommend a significant effort be dedicated to identifying and engaging with these experts and organisations.

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

Yes

Free text box, no character limit:

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

Given the burden of diet related non-communicable diseases grows annually, there needs to be some quantification in the Cost Benefit Analysis of the proportion increase in products which cause public health harm each year and the total public health cost of the increasing supply of these products as facilitated by FSANZ within the food regulatory system. Furthermore, costs to the environment should be considered, particularly any risks of increasing climate-related impacts or biodiversity loss, which would have implications for food security. These impacts need to be modelled under Option 1 and Option 2.

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

Proposals

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

Applications

- Applications are largely for commercial benefit and not public health outcomes - this needs to be reflected in the Cost Benefit Analysis.
- It should not be assumed that every application has a consumer benefit and offering consumers 'more choice' should not be considered a benefit if the food/product on offer is ultra-processed or otherwise is likely to contribute to diet related disease, poorer food security and an unsustainable food system.
- A unit cost/benefit for consumers for applications specifically needs to be set out (not the \$1.3m used for proposals) and the rationale for that amount articulated.

Standard reviews

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

Industry costs

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

Section 8 - Best option and implementation

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

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

No

Free text box, no character limit:

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

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

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

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

Prefer not to respond / I don't know

Free text box, no character limit:

Section 8 - Best option and implementation (Delivery risks)

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

No

Free text box, no character limit:

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

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

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

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

No

Free text box, no character limit:

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

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

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

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

Theme: purpose and objectives

Option 1

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

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

Option 2

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

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

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

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

Theme: reformed standard-setting

Option 2

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

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

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

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

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

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

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

We support the risk rating for this risk.

Theme: efficient and effective operations

Option 1

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

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

Option 2

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

We strongly disagree that the consequence of this should be comparable to unsafe foods entering the market or the introduction of higher risk (i.e. unhealthy food) to population health, as there is no risk of harm to population health. We recommend the consequence rating should be 3 (not 1). The IA only proposes a levy on large organisations, hence the likelihood of this risk is low (3). Furthermore, the food industry is a multi-billion dollar industry, capable of absorbing costs, compared with a publicly-funded healthcare sector which is overwhelmed and underfunded. The priority needs to clearly be in favour of protecting public health.

Section 9 - Evaluation of the preferred option

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

Yes

Free text box, no character limit:

Other comments

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

Yes

Free text box, no character limit:

Resourcing of FSANZ

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

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

Inclusion of sustainability in the act

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

Expanding the objectives of the Act in Section 3, 13 and introducing a related provision in Section 18(2), would give clear responsibility for FSANZ to promote food security and sustainability. Such a change would enable FSANZ to consider issues that promote or threaten sustainability (particularly as it relates to food security) in its deliberations about food regulatory measures. Without a healthy environment, food production is greatly at risk. This is particularly true for Australia as climate impacts are likely to more severely impact our agricultural areas than some other parts of the globe. Not only could this increase the likelihood of food shortages and thus impact our nation's food security, but natural disasters are breeding grounds for disease, which could have direct impacts on human health, with the possibility of food as a vector. Finally, many current food production practices act to worsen the sustainability of our ecosystems, causing a feedback loop to be created whereby food production is further at risk. Without including this major issue, FSANZ will be unable to address this key food security and food safety issue.

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

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

FSANZ's role in the food supply

We note that the IA fails to highlight FSANZ's role in improving and shaping the food supply. We recognise that FSANZ is only one mechanism within the food regulatory system for this, but it is an important one. The potential impact of FSANZ making full impact assessments that adequately explore public health effects on a regular basis, and its ability to shape product formulation and labelling across the available food supply, has a scale of impact on diet-related diseases/food security/sustainability that most other mechanisms do not. This 30-year opportunity to ensure FSANZ's role in improving the

food supply and the resulting public health outcomes needs to be taken. Taken together, the combined impact of the reforms in Option 2 of the IA will further compromise the capacity of FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Representation of public health and consumer stakeholder voice

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

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

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

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

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

Privacy and Confidentiality

Do you want this submission to be treated as confidential?

No.

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

Free text box, no character limit: