



Public Health Association
AUSTRALIA

Public Health Association of Australia submission on the Review of the Food Standards Australia New Zealand Act Draft Impact Analysis

Contact for recipient:

A: Department of Health and Aged Care
GPO Box 9848, Canberra ACT 2601
E: fsanzactreview@health.gov.au **T:** (02) 6289 1555

Contact for PHAA:

Terry Slevin – Chief Executive Officer
A: 20 Napier Close, Deakin ACT 2600
E: phaa@phaa.net.au **T:** (02) 6285 2373

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The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens, but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

Our mission is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society, underpinned by a well-functioning ecosystem and a healthy environment.

Traditional custodians - we acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

Introduction

PHAA welcomes the opportunity to provide input to the Review of the Food Standards Australia New Zealand (FSANZ) Act Draft Impact Analysis (IA).

This review of the FSANZ Act is a vital opportunity to strengthen the food regulation system to ensure that it promotes and safeguards public health. A strengthened FSANZ would not only assess the acute health impacts from consuming food and beverages but would also assess the health impacts from consuming particular foods and beverages over a longer period of time that may give rise to future chronic illnesses.

The contribution of our food system to chronic conditions and long-term population health is important but under-recognised in the current Act. The recently released IA shows that assessment of long term health impacts from food and beverages (diet-related diseases) are not being considered in FSANZ's decision making process. There are no proposed reforms that will improve how the system and FSANZ deals with long-term public health impacts, despite this being the key public health recommendation from PHAA and other public health groups in prior consultations.

Additionally, reform options have been presented in the IA that will likely reduce transparency and independent oversight rather than guarantee a well-funded, independent and transparent FSANZ.

We urge this review to recommend strengthening the FSANZ Act to ensure this situation is rectified. In this submission, we offer solutions to improve how the FSANZ Act enacts assessment of the long-term health impacts of the food regulation system.

The PHAA appreciates the opportunity to make this submission. We recommend the following actions are taken:

- A definition of public health be included in the Act as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.
- Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).
- Development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.
- Include statutory timeframes for standard reviews (3 years).
- Include statutory timeframes for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.
- Remove the expedited applications process.
- Implement an industry wide levy.
- The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

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Section 3 - The problems to solve (Methodology)

What are the issues with the current methodology? How should it be improved?

The Impact Analysis (IA) and hence, the methodology, does not account for the long-term health impacts of foods and beverages, leaving consumers unprotected and exposed to preventable diet-related diseases.

Additionally, the IA has provided minimal detail regarding the methodological process, inputs and assumptions underpinning problem identification and prioritisation.

Ultimately, the proposed methodology has not identified the key policy problem of the Act –the Act does not enable the food regulatory system to meet its primary objective of protecting public health, specifically long-term health and preventable diet-related diseases, and the provision of adequate information to enable consumers to make informed choices. This point has been raised consistently by public health and consumer groups during the FSANZ Act review process.

Although the IA policy problem 1 attempts to incorporate a definition of public health into the Act as a solution, this alone does not solve the actual policy problem of how FSANZ operations can and should address long-term health and preventable diet-related disease. To help address this, we propose that a Public Health Test be incorporated into the Act (see component 2.1 ‘other initiatives’).

Policy problem 2 also does not adequately address time and cost burdens to consumers and governments if FSANZ fails to undertake standard reviews and proposals in a timely manner.

The IA presents two possible solutions: Option 1, ‘retain the status quo’ with no changes to the Act or to FSANZ operations, and Option 2, ‘modernise regulatory settings’ by adopting the entire package of reforms. PHAA disagrees with this all-or-nothing approach, as many of the valid problems identified in Option 1 can be fixed without changing the Act or operational framework of FSANZ. We also note that many reform elements presented by the IA as part of Option 2, are similarly available under Option 1 and do not require legislation to implement, however this is not considered in the IA.

Options 1 and 2 should therefore not be deemed two independent options. We recommend that the overlapping elements are incorporated under Option 1, and that the modelling and cost benefit analysis (CBA) reflects this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, and the benefit of this should be assessed independently.

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

The Act should include responsibility for food systems security and vulnerability to climate change and biodiversity loss (as well as other food shocks) via impact analysis. FSANZ has the opportunity to play an important role in safeguarding food safety, security and sustainability, as well as ensuring Australia and New Zealand's national and international obligations under the Paris Agreement and Nationally Determined Contributions are fulfilled.

Internationally, public health nutrition guidelines and policies are increasingly considering environmental sustainability¹ and this issue is likely to be adopted into the next iteration of the Australian Dietary Guidelines. To be current and fit-for-purpose, the FSANZ Act should consider the relationship between health and the environment. We see this to be a critical and major gap in the Act.

Through the expansion of FSANZ responsibilities via the Act, and increasing resources and internal expertise, FSANZ can be an effective agency to respond to the regulatory needs that are required for continued and sustainable food security.

Section 3 - The problems to solve (Ratings)

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

No

Which rating(s) do you believe is inappropriately rated? What would be a fair rating for the problem?

The sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders should receive the highest possible impact ratings. These are:

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

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

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

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

Section 5 - Options for reform: Component 2.1.1

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

Yes

Including a definition of public health and safety in Section 3 and 18 of the Act is appropriate. The Act itself should expressly include FSANZ's role in protection against both short and long-term risks to health, including diet-related disease and food sustainability, when developing food standards.

¹ James-Martin G, Baird DL, Hendrie GA, Bogard J, Anastasiou K, Brooker PG, Wiggins B, Williams G, Herrero M, Lawrence M, Lee AJ, Riley MD. Environmental sustainability in national food-based dietary guidelines: a global review. *Lancet Planet Health*. 2022 Dec;6(12):e977-e986. doi: 10.1016/S2542-5196(22)00246-7. PMID: 36495892

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However, this amendment would only have limited effect if the reform does not also address *how* FSANZ implements this part of their role. We strongly recommend the inclusion of a Public Health Test in the Act to address this (see component 2.1 'other initiatives').

We support the use of the definition in the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors food security and food sustainability.

PHAA recommends the Act be amended to include a definition of public health as per the Statement with the following amendment (in italics): "all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short-term or long-term, including preventable diet-related, disease, illness, and disability, *and the diet-related risk factors for them*, as well as acute food safety, food security *and sustainability concerns*."

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

No

The Ministerial Policy Statement, which has been in effect for a decade, already requires FSANZ to consider long-term health. The inclusion of the definition simply clarifies the role of FSANZ for external stakeholders, but the inclusion itself would not materially impact FSANZ's approach.

The CBA considers the following a qualified cost to industry of this reform: "There is the risk that clarifying the definition of public health could inadvertently broaden FSANZ's remit in managing public health risks, potentially creating additional administrative burdens in the preparation of applications and creating barriers to trade."

We do not agree that confirming FSANZ's already legislated role in mitigating public health risks should be considered a cost to any stakeholder and ask that this be removed as a qualified cost.

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

Positive

Section 5 - Options for reform: 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?

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

The Act should be amended to ensure that FSANZ decision-making aligns with Ministerial Policy Guidelines and other items which FSANZ must consider, listed in s18(2)(a)-(d), only be considered once compliance with Ministerial Policy Guidelines is assured.

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

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

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

Section 5 - Options for reform: Component 2.1.3

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

Don't know.

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

Section 5 - Options for reform: Component 2.1 overall

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

Yes

Including a definition of public health will not itself ensure that the short and long-term impacts on health and any diet-related risk factors are considered in food standards. There must also be a mechanism to achieve public health outcomes through food standards.

We recommend amendments be made to the Act to establish a set of considerations that FSANZ must apply when setting priorities and making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations for assessing public health benefits and risks when developing, reviewing, updating and adopting food standards.

PHAA supports the below Public Health Test as proposed by The George Institute for Global Health in their submission. However, PHAA would also recommend that the environmental effects from the food supply should be incorporated as well (in italics).

The PUBLIC HEALTH TEST

Priority setting should consider:

- a) The burden of disease attributable to the food supply [1];
- b) Estimated benefit of change to the food supply from the work under consideration;
- c) *The environmental effects from the food supply.*

Decisions should:

- a) Discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme;

- b) Encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines [2];
- c) Reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease [3];
- d) Assess the impact on the burden of disease attributable to the food system;
- e) Include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis;
- f) Assess the cumulative impacts of the introduction of new foods on public health outcomes;
- g) Reduce availability of unhealthy foods targeted at children;
- h) *Prevent further expansion of ultra-processed foods that are resource intensive.*

[1] Could be measured by the incidence of diet-related disease in the population and priority populations, as well as through vulnerability assessment of priority populations to diet-related disease.

[2] noting that updates are considering sustainability of the food supply

[3] for example added sugars, sodium and fats (trans fats, saturated fats) and additives with known health risks.

Section 5 - Options for reform: 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

Although there are both risks and opportunities to the introduction of a risk-based framework, the information provided in the IA is too limited for PHAA to provide a definitive answer on the proposed approach. For instance, the IA doesn't detail how the risk framework will be applied, who will make decisions and what appeal mechanisms there will be.

From the information that is provided, it appears that food industry/commercially driven decisions are consistently assessed as 'low risk' and public health decisions are assessed as 'high risk'. Meaning that commercial decisions can be made quickly and without public scrutiny, as they would not need to go through rigorous consultation. Meanwhile, public health related decisions that would be open to the influence of commercially driven submissions from industry, require a higher evidentiary burden and take longer.

We are concerned that this would widen the existing disparity between the approach to public health and industry decisions under the Act, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

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

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

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

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

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

The Public Health Test (see component 2.1 'other initiatives') should be the criterion. The risk framework should set out how likelihood and consequences will be assessed. The framework should also elaborate on where the risk assessment will fit within the decision-making process; delegation for risk assessment decisions; communication and appeals mechanisms.

Section 5 - Options for reform: Component 2.2.2

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

No

There is no surety that accepting risk assessments from international jurisdictions would ensure standards represent the best outcomes for public health and consumers. The IA states that the determinations of 'overseas bodies' could be adopted. We would support international food standards only where those standards meet the Public Health Test (see component 2.1 'other initiatives'), and where non-conflicted bodies, like the World Health Organization, are included.

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

No

The IA also does not provide enough detail as to how "enabling FSANZ to automatically recognise" would work. For instance, the IA mentions that there would still need to be decision making processes regarding this, but then does not outline what those decision-making processes might be. We recommend that any harmonisation should be consulted on and should include consideration of the Public Health Test (see component 2.1 'other initiatives').

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

No

The intention for the minimal check pathway appears to apply only to applications and not proposals. Furthermore, this risks further prioritising commercial decisions over public health impacts, as risk assessments and evidence will not be open to public scrutiny during consideration of the application (i.e. before decisions are made), undermining the primary objective of the Act to protect public health.

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

No

New pathways could remove public consultation. If FSANZ internal processes assess risk as low, then there is no public consultation step. The assumption is that the internal process would produce the same finding

as the current public consultation step. The reform option does not outline how this would be demonstrated or assured.

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

Negative

There is no evidence from the IA that any new pathways would apply to broader public health measures. This risks further prioritising commercial decisions.

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

Yes

If consideration is given to expedite public health measures, and the risks of removing public consultation for commercially driven decisions are mitigated using the Public Health Test (see component 2.1 'other initiatives'), then there are opportunities relating to new pathways. We also suggest statutory timeframes for proposals to ensure they are processed in a timely manner (see component 2.2 'other initiatives')

Section 5 - Options for reform: Component 2.2.3

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

We strongly encourage the Public Health Test to be used to assess risk. Consultation on the risk framework, should include specific questions about risk allocation for the purpose of decision-making delegation. Any new decision-making process should be subject to review after a period of operation.

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

Don't know

If the proper consultation processes have been completed and risk has been determined accurately using the Public Health Test, then delegation of low-risk decisions could assist in streamlining decision making processes and reduce delays. However, there is not enough information regarding the risk framework at present to identify how streamlining may impact public health.

Section 5 - Options for reform: 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

The Public Health Test could be used to determine which reviews are undertaken and how they are prioritised.

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

Yes

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

We also support the implementation of timelines for standard reviews. Ideally, a timeline of 3 years from “decision to prepare” to “notification to FMM” with the potential for a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual.

PHAA recommends the Act be amended to include statutory timeframes for standard reviews (3 years).

Section 5 - Options for reform: Component 2.2.6

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

No

FSANZ can already develop guidelines and Codes of Practice, therefore no amendments to the Act are required to enable this. We do not support changes to the process and approval pathway for developing guidelines and Codes of Practice.

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

Negative

We do not support this. Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice are consistently ineffective, unenforced and a risk to public safety, health and confidence in the food system.

See:

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

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

Section 5 - Options for reform: Component 2.2 overall

Are there other initiatives that should be considered in Component

Yes

Timeframes for proposals.

In their current form, the reform options presented in the IA will not result in more proposals being progressed, nor will they ensure that the proposals are processed in a timelier manner. A practical option to address this issue would be to introduce statutory timeframes for proposals into the Act.

Currently there is a wide range of completion times for proposals, with an average completion time of 3.5 years. Implementing a timeframe of three years for completing proposals will create an incentive and a more balanced approach to progressing these important reforms and allow sufficient time for FSANZ to identify, and if necessary, generate, evidence to support decision-making.

PHAA recommends the Act is amended to include a statutory timeframe for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence takes longer than usual.

Section 5 - Options for reform: Component 2.3.1

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

Yes

We support the inclusion of additional skills. Regarding the suggestion that expertise in First Nations and Māori food and culture could be added to these additional skills, we note that for adequate representation, specific positions for both First Nations and Māori people should be created on the FSANZ Board.

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

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

No

The current nomination process whereby public health organisations put forward a nominee ensures greater management of real/perceived conflicts of interest. An open market process might reduce the number of public health positions on the board, and reduce the quality of public health nominees, particularly given that there are no details as to what such a process would look like.

Section 5 - Options for reform: Component 2.3.2

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

Positive

Expedited applications create a pathway for large industry stakeholders to gain priority in the FSANZ process. Allowing expedited applications results in matters that are important to public health being de-prioritised, despite the main objective of the FSANZ Act stating its purpose is “to ensure a high standard of public health protection throughout Australia and New Zealand”. Removing expedited applications creates a more level playing field for all.

PHAA recommends the Act is amended to remove the expedited applications process.

Section 5 - Options for reform: Component 2.3.3

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

Positive

An industry-wide levy would ensure reliable funding for FSANZ to carry out its necessary and important duties.

PHAA recommends the Act is amended to implement an industry wide levy.

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

We support the figure presented in the IA, that the levy applies to the top 5000 large food businesses.

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

Negative

Compulsory fees are not as financially sound as an industry-wide levy for resourcing FSANZ.

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

No

We do not believe that it is within the FSANZ remit to assist with entrepreneurial activities.

Section 5 - Options for reform: Component 2.4.1

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

Yes

How would this need to be implemented to be successful?

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA.

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

We would support the use of the Public Health Test to guide the prioritisation of all FSANZ work, as public health remains the priority objective of the Act.

Section 5 - Options for reform: Component 2.4.2

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

Yes

We note that this mechanism is all already in place and available to FSANZ under Option 1 of the IA, and any enhancement of them is available under both options.

Section 5 - Options for reform: Component 2.4.3

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

Yes

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

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

Data is critical in identifying priorities, the development of policy options and the evaluation of implementation. We recommend the development of a routine and comprehensive nutrition monitoring and surveillance system in both Australia and New Zealand.

Data that should be collected and curated includes data on:

- Food supply including composition
- Sales data
- Dietary intake (consumption data)
- Nutrition related health outcomes, as they relate to broader burden of disease.
- Food security data

- Data relating to food sustainability such as greenhouse gas emissions, biodiversity loss indicators, water scarcity footprints, land scarcity footprints, eutrophication potential, acidification potential and plastic use resulting from the production, consumption and waste of food in Australia.

Section 5 - Options for reform: Component 2.4.4

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

Yes

What should be the focus of such information sharing arrangements?

It would be acceptable for FSANZ to share information with international partners as part of initial background research development. This differs to the earlier question relating to automatic recognition of international standards, which we do not support. International experience can provide helpful insight, but recognising other jurisdiction's standards for the Australian and New Zealand context is inappropriate.

Section 5 - Options for reform: Component 2.4.6

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

Yes

We support the amendment of the Act to ensure First Nations and Māori peoples are properly consulted on FSANZ work, with the creation of consultation guidelines. We recommend that FSANZ considers co-developing culturally tailored compliance guidelines with First Nations and Māori stakeholders to ensure the food regulatory system is inclusive of the diverse needs of the community, as it relates to nutrition, culture, food security, and public health.

Section 5 - Options for reform: Component 2.4.7

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

Yes

Section 6 – Net Benefit (Option 1)

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

Yes

The current approach appears to conclude that the benefit of Option 2 (modernized regulatory settings) supersedes Option 1 (status quo). However, this calculation doesn't consider that there are key reforms proposed in Option 2 that could apply equally under Option 1, nor is it calculated into the CBA that some of the reforms of Option 2 may not ultimately be implemented.

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

- Costs and benefits for all impacted stakeholders (industry, consumers and governments) for each of type of FSANZ work separately (i.e. costs and benefits to consumers from applications, costs and benefits to consumers from proposals, and costs and benefits to consumers from standards reviews) - these are not equal and should not be treated in the same way.

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- The CBA should clearly state what is meant by 'public health benefits.' Separate definitions of short-term public health benefits and long-term public health benefits should be set out.
- Short (primarily safety) and long-term (chronic disease) benefits should be separately noted for each element of the CBA, for both consumers and governments.
- Health, healthcare system and associated social and economic impacts should all be quantified clearly for both costs and benefit for both consumers and governments.

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

What are the current delay costs to industry?

It would be unreasonable for the CBA to equivocate delayed profits for industry to health system costs borne by governments and consumers. The CBA in the IA, however, notes that there are delay costs to industry due to the inefficient processing of both applications and proposals. Yet, there are no details provided to substantiate that assumption, nor are examples provided. Additionally, the data that is presented in the IA is not independent or verifiable.

Section 6 – Net Benefit (Option 2)

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

Yes

Please see response to "Section 6 – Net Benefit (Option 1) *Are there other costs and benefits that have not yet been qualified or quantified?*" Also, the CBA should clearly articulate how a 'risk-based' approach improves public health.

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

Yes

The summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits. We do not agree that this conclusion can be drawn from the data or proposed reforms presented.

The CBA states that public health represents the main driver of benefits under Option 2, but there is insufficient detail to determine whether these benefits will be realised. This is highlighted by the absence of consideration of the burden of disease throughout the CBA and the key assumption that all applications, standard reviews and proposals only lead to public health benefits. It is important for example, that the impact of reform options is modelled to show costs as a result of poor health, to both the healthcare system and consumers.

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

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

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

No

The approach taken presents a conclusion of overall significant benefit to Option 2, even though it is possible that not all components of Option 2 will be introduced, and some of the proposed changes could be made equally in Option 1. Our responses on the best option and implementation reflect this, specifically:

- Criterion 1 of the methodology (extent to which the options and their components solve policy problems) does not have application for Option 1, because Option 1 proposes no changes to current arrangements. This zero rating for each policy problem under Option 1 weights the solution in favour of Option 2. In addition, the subjective analysis of whether Option 2 solves the policy problems has resulted in a distortedly high total score for Option 2 under criterion 1.
- Many of the reforms suggested under Option 2 can already be made available by FSANZ under Option 1 and should therefore not receive a positive rating where they are considered for Option 2.

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

No

As stated in the previous response, the methodological approach taken has some key issues that have subsequent flow on effect to the assigned ratings of sub-problems.

Section 8 – Best option and implementation (Delivery risks)

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

No

The IA has thematically grouped the reform components, however, to better assess the risks within each component, we recommend that each component is assessed separately, particularly as it is uncertain that all components will be implemented. It is imperative that the risks of each component are clear so that the combined impact of components that are implemented can be accurately assessed. Similarly, uncertainty around the public health objective and management of risks related to long-term health/food security/sustainability should be considered as separate risks and not grouped together. Additionally, the risk-framework and new pathways have potential to impact short-term health outcomes and long-term health outcomes. This must be specified and the risk for each assessed separately.

The lack of requirement to properly resource FSANZ to complete proposals and reviews must also be considered a risk. However, the current method has not been factored in as a risk itself, nor into the assessment of related risks. Reallocation of resources and new sources of funding are insufficient to adequately support FSANZ's organisational capacity to manage its current workload and address and manage risks relating to long-term health impacts in a timely manner. This should be clearly identified as a risk under both Options 1 and 2.

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

No

The IA summarises that Option 1 was deemed on average much riskier than Option 2, yet many of the risks identified under Option 1 can be addressed without legislation under the status quo. It also does not consider that the reform components in Option 2 may not all proceed, nor does it consider that the

components may not resolve the risk. Due to this bias in the methodology, risk ratings cannot be appropriately assigned as they have not yet been properly assessed.

Section 9 – Evaluation of the preferred option

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

Yes

Inclusion of sustainability in the Act

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

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

Public health support for this approach was provided throughout earlier stages of the Review. The release of the National Health and Climate Strategy clearly demonstrates the Commonwealth Government's commitment to address food security in the face of climate change (See Actions 3.1, 3.3, 3.5-3.8, 4.15, 4.16, 4.3, 5.3, 5.4, 6.6, 6.7 and 7.5). Many of these Actions must have the support of the food regulatory system to be realised. The next iteration of the Australian Dietary Guidelines will include a focus on sustainability.

New Zealand has a Climate Change Response (Zero Carbon) Amendment Act 2019 that provides a framework by which New Zealand can develop and implement clear and stable climate change policies.

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

FSANZ's role in the food supply

The IA does not highlight FSANZ's role in improving and shaping the food supply. Although FSANZ is only one mechanism within the food regulatory system for this, the potential impact of FSANZ making full impact assessments that adequately explore public health effects, and its ability to shape product formulation and labelling, has a scale of impact on diet-related diseases that most other mechanisms do not.

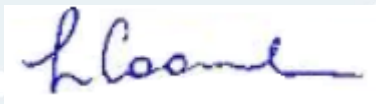
This 30-year opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be taken. From the information provided in the IA, we do not believe that Option 2 will enable FSANZ to meet its two legislated, priority objectives – to protect public health and safety, and to support consumers to make informed choices.

Conclusion

The PHAA appreciates the opportunity to make this submission. We recommend the following actions are taken:

- A definition of public health be included in the Act as per the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures, with the addition of diet-related risk factors.
- Ministerial Policy Guidelines have priority over other matters to which FSANZ must have regard when making decisions (as listed in s18(2)(a)-(d) of the Act).
- Development of the risk-based framework be brought forward so that it can be consulted on in detail, separately and simultaneously, with the FSANZ Act Review.
- Include statutory timeframes for standard reviews (3 years).
- Include statutory timeframes for proposals (3 years) from “decision to prepare” to “notification to FMM” with a one-year extension to be sought from FMM in exceptional cases where gathering the necessary evidence is taking longer than usual.
- Remove the expedited applications process.
- Implement an industry wide levy.
- The Cost Benefit Analysis must appropriately reflect public health costs and benefits and the design, conduct, analysis and interpretation must be redone to achieve this.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.



Hon. Assoc Prof Leanne Coombe
Policy & Advocacy Manager
Public Health Association of Australia

10/04/2024



Dr Bronwyn Ashton
Co-Convenor
Food and Nutrition SIG
Public Health Association Australia