

22 February 2022

Hon Mark Butler MP
Shadow Minister for Health and Ageing
House of Representatives, Australian Parliament House
CANBERRA ACT 2600

By email to: Mark.Butler.MP@aph.gov.au

Dear Mr Butler,

We write to raise the serious concerns of public health and consumer organisations about the direction and process of current food regulatory reforms, in particular the review of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) led by the Commonwealth Government.

One in six deaths in Australia and New Zealand are caused by diet related disease, and it is our strong view that the FSANZ Act has an important role to play in improving the food system and saving lives. We are concerned, however, that this review is being conducted in such a way as to diminish the primacy of public health within the FSANZ Act, compromising the health and wellbeing of Australians and New Zealanders.

We attach for your information a letter sent to Minister Colbeck in his capacity as Chair of the Food Ministers Meeting. This letter has also been sent to Food Ministers representing all Australian states and territories and commonwealth governments and New Zealand. Background on the reform process is also attached.

The letter is from 24 public health and consumer organisations concerned with the process and the substance of proposed reforms. Public health and consumer groups are united in their opinion that none of the options currently put forward in the draft FSANZ Regulatory Impact Statement adequately protect public health and safety, particularly long-term health and safety.

As set out in the letter, public health and consumer organisations are seeking:

- clarification and confirmation around the process and transparency for stakeholders; and
- a revised draft of the FSANZ Act Regulatory Impact Statement that meets listed minimum requirements to ensure that the protection of public health and safety, including long-term health and safety, has primacy in the FSANZ Act.

We are concerned about industry action to steer this reform process in a way that places profits before health. This has been evident through actions such as calls to move responsibility for both FSANZ and role of Chair of the Food Ministers Meeting out of the Health portfolio and to the Agriculture portfolio, and making trade an objective of the Act, a step that would clearly undermine the FSANZ Act's primary focus on public health.

In your capacity as Shadow Minister for Health and Ageing, we ask you to take action to protect public health and call on Minister Colbeck and the incumbent Government to ensure these concerns are adequately addressed. It is important that this process is not rushed, and that adequate time is taken to ensure that food regulatory reforms are undertaken with a view to ensuring that public health protection is strengthened and that reforms are developed in conjunction with public health and consumer stakeholders.

We urge you to commit to protect and prioritise public health within the food regulatory system and the FSANZ Act, as Australia heads into a federal election, and would appreciate the opportunity to meet with you to discuss this further.

Jane Martin, Executive Manager at the Obesity Policy Coalition, can be contacted at jane.martin@cancervic.org.au for further information and to arrange a meeting.

Attachment 1: Ltr to Minister Colbeck

22 February 2022

Senator the Hon Richard Colbeck
Minister for Senior Australians and Aged Care Services, Minister for Sport
Chair, Food Ministers Meeting

By email to: FoodRegulationSecretariat@health.gov.au and Senator.Colbeck@aph.gov.au

Dear Minister Colbeck,

We, the undersigned 24 public health and consumer organisations, write to you as Chair of the Food Ministers Meeting (FMM) following the release of the Food Ministers' Meeting Communique of 16 December 2021 (the Communique) about the Food Standards Australia New Zealand Act 1991 (FSANZ Act) Review.

We were pleased to see that Ministers confirmed '*the principle of the protection of public health and safety and [that] this has primacy in the FSANZ Act*'. One in six deaths in Australia and New Zealand are caused by diet related disease, and it is our strong view that the FSANZ Act has an important role to play in improving the food system and saving lives.

We are concerned, however, that this principle is not represented in the FSANZ Act Regulatory Impact Statement option that has been presented to Ministers at the December 2021 FMM (December RIS).

As Chair of the FMM we seek further information and transparency on the progress of this reform, including clarification and confirmation on the following processes and actions:

- **Clarification of how the FSANZ Act Review will align with other actions associated with the modernisation of the food regulatory system.** As noted in the Communique, the FSANZ Act Review is part of a comprehensive reform agenda, including a review of the Food Regulatory Agreement and Aspirations for the Food Regulatory System. We ask you to clarify what progress has been made on other elements of this reform work and how this is being incorporated into the review of the FSANZ Act.
- **Clarification on when the summary of stakeholder submissions will be made public.** The Food Regulation website states that '*a summary of stakeholder views will be published for each public consultation*'. No summary of submissions has been published following consultation on the Regulatory Impact Statement released in May 2021 (May RIS). While nearly a thousand pages of individual submissions were released in December 2021, the summary remains critical to understanding how concerns raised have been synthesised and will be addressed by government in any reform.
- **Confirmation that a public health impact analysis has been done for each element and the overall combined impact of the December RIS option.** To ensure that amendments to the FSANZ Act protect the primacy of public health and safety, an impact analysis is required to assess whether the individual or combined impact of the December RIS option is likely to

weaken the existing protection of public health and safety, including long-term health and safety. Public health and consumer organisations were clear in their submissions on the May RIS that this had not been adequately done at the time of consultation. We ask you to confirm that this analysis has since been done and to release it for public consideration.

- **Confirmation that consultation on the next version of the RIS will be held.** Public health and consumer organisations have not seen the December RIS but understand it draws on options in the May RIS. Public health and consumer groups raised numerous concerns with the May RIS and pushing forward with these options without further consultation to understand and address public health and consumer organisations' concerns will risk a solution that compromises public health and would be a failure to follow due process. We seek confirmation that public health and consumer groups will be consulted in the development and finalisation of the preferred RIS option.
- **Clarification on next steps and timeline.** It is imperative that Ministers have sufficient time to give all proposed amendments adequate consideration. It is also essential that the Food Regulation Standing Committee (FRSC) has been briefed, engaged, and given adequate time to advise Ministers. We ask you to advise us how the reforms will be progressed and when these steps will take place.

Public health and consumer groups are united in their opinion that none of the options put forward in the May RIS adequately protect the primacy of public health and safety, particularly long-term health and safety. Overweight, obesity and poor diet are leading preventable risk factors for disease in Australia and amendments to the FSANZ Act should empower FSANZ to address this burden. To inform the Ministers' consideration of proposed reforms, we reiterate the minimum requirements to ensure the primacy of public health and safety in the FSANZ Act in the attached document.

Food Ministers have an important opportunity to reform the food regulatory system to ensure it can effectively protect and promote the health and wellbeing of all Australians and New Zealanders into the future. Time should be taken to ensure we get these reforms right.

We urge you to consider these critical issues as you progress the FSANZ Act reforms. We welcome your response to our concerns and would like to meet with you to discuss this further. Please contact Jane Martin, Executive Manager, Obesity Policy Coalition at Jane.Martin@cancervic.org.au for further information or to arrange a meeting.

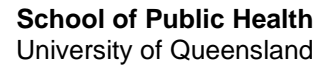
cc: Hon Greg Hunt, Minister for Health and Aged Care

cc: Members of the Food Ministers Meeting

cc: Members of the Food Regulation Standing Committee



AUSTRALIAN CHRONIC DISEASE PREVENTION ALLIANCE



Dr Rosemary Stanton OAM
Independent Public Health Nutritionist



Attachment: Minimum requirements to ensure the primacy of public health and safety in the FSANZ Act

- **The FSANZ Act must align with the Food Regulatory Agreement and Aspirations for the Food Regulatory System.** The Aspirations for the Food Regulatory System have been agreed by Food Ministers and it is fundamental that amendments to the FSANZ Act enable FSANZ to fulfil its role in meeting these aspirations.
- **The individual and combined impact of proposed changes to the FSANZ Act must not weaken existing public health protections, including for long-term health.** This must be demonstrated through a comprehensive public health impact analysis.
- **The FSANZ Act must clearly define public health to include long-term health.** Ministers have previously agreed a definition for public health and safety in the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing and Varying Food Regulatory Measures - *'All those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short term or long term, including preventable diet-related disease, illness and disability as well as acute food safety concerns'* - this should be incorporated into the FSANZ Act.
- **Responsibility for FSANZ and the position of Chair of the FMM should remain within the health portfolio.** To ensure the primacy of public health and safety within the FSANZ Act, responsibility for FSANZ and the position of Chair of the FMM remain with the health portfolio.
- **Public health and safety, as defined above, must have primacy in the FSANZ Act's objectives.** To ensure this, trade should not be incorporated as a specific objective of the FSANZ Act and amendments to section 18 of the FSANZ Act must clearly prioritise the following objectives and matters to which FSANZ must have regard above industry and trade matters:
 - the protection of public health and safety (s19(1)(a) FSANZ Act);
 - the provision of adequate information relating to food to enable consumer to make informed choices (s18(1)(b) FSANZ Act);
 - the prevention of misleading or deceptive conduct (s18(1)(c) FSANZ Act); and
 - any written policy guidelines formulated by the Forum on Food regulation (s18(2)(e) FSANZ Act).
- **Key reforms to ensure the primacy of public health must be included:**
 - levelling the imbalance between the application and proposal pathways by setting statutory minimum timeframes for proposals that are at least aligned with timeframes for industry applications;
 - developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code; and
 - resourcing FSANZ to set strategic priorities that aim to promote healthy food options, improve diets and prevent diet-related disease.

Background on food regulatory reforms to date

On 15 November 2019, the Australia and New Zealand Ministerial Forum on Food Regulation endorsed an ambitious plan to reform the bi-national Food Regulation System (the System). The reform agenda is being progressed via three interconnected sub-projects¹ and separately the Australian Government is undertaking a review of the FSANZ Act. This work is all supposed to be progressed in lockstep to ensure cohesive outcomes for all workstreams.

Initial consultation on two of the three sub-projects was conducted in December 2020 and January 2021² and dovetailed with initial consultation on the FSANZ Act review in November 2020. Since then, stakeholders have seen no progression of the work to reform the System, but the FSANZ Act review has been progressed significantly, completely out of step with the reform work.

This included consultation on a draft Regulatory Impact Statement for the FSANZ Act (RIS) in May 2021. Public health and consumer groups raised concerns at this time that the RIS did not reflect reform work done to date, failed to put public health first, despite this being the primary objective of the FSANZ Act, and did not address key policy problems.³ No summary of submissions on the RIS has been released to date, despite calls for this by numerous organisations and in question time in the Senate.

Public health and consumer submissions on the RIS were consistent in stating that the proposed changes to the FSANZ Act outlined in the RIS would result in worse outcomes for public health and consumers than the current FSANZ Act. Despite this overwhelming lack of support from public health and consumer organisations, the RIS has been further progressed and we understand that a preferred option, based on the two least preferred options in the RIS, was put to Food Ministers prior to their 16 December 2021 meeting (Preferred Option). Food Ministers did not receive the Preferred Option and related documentation in a timely manner before the meeting and deferred consideration to a future meeting. They also noted that they needed time to allow for further discussions with jurisdictions and to ensure alignment with the work to reform the System. Stakeholders have had no visibility of this Preferred Option. This makes it difficult for the public health sector to support the review process and ensure the health and safety of the community are adequately protected.

Concerns about the timing and transparency of this work are coupled with concerns that industry are seeking to weaken the role of FSANZ, following the removal of both the FSANZ Chair and CEO last year and the release of private correspondence between the alcohol industry and the two Commonwealth Ministers on the Food Ministers Meeting seeking to influence the outcome of the FSANZ Act review.

¹ The three sub-projects are:

1. Review of the Food Regulation Agreement
2. Jurisdictional Inconsistency: Identify key areas of inconsistency in food regulatory approaches based on the impacts on industry and government.
3. Operations Review: Develop and implement new operational processes to support the system's governance.

² Consultation on Jurisdictional Inconsistency was held in December 2020. Consultation on Aspirations for the Food Regulatory System was held in January 2021.

³ On 8 June 2021 26 public health and consumer groups released an open statement raising their concerns - [Public health and consumer organisations call for food regulatory reform to put the health of Australians and New Zealanders first - Obesity Policy Coalition \(opc.org.au\)](#)