

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

**Response to consultation  
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**Recipient**

Australian Government Department of Health and Aged Care

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**Dietitians Australia acknowledges all traditional custodians of the lands, waters and seas that we work and live on across Australia. We pay our respect to Elders past, present and future and thank them for their continuing custodianship.**

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## About Dietitians Australia

Dietitians Australia is the national association of the dietetic profession with over 8500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for the profession and the people and communities we serve.

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians have an important role in ensuring nutrition-related policies are evidence-based, fit for purpose and improve nutrition outcomes.

This submission was prepared by staff and members of Dietitians Australia following the [Conflict of Interest Management Policy](#) and processes approved by the Board of Dietitians Australia. Contributors include Dietitians Australia members with wide ranging expertise in areas including public health and academia.

## Survey responses

### 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.**

Dietitians Australia appreciates the opportunity to continue to engage in the review of the FSANZ Act (the Act). Dietitians Australia's primary concern with the current system and the Act is that it does not meet its objective of protecting public health, specifically long-term health outcomes including protection against diet-related disease. This is a key problem, but the current methodology fails to capture it adequately. We recognise that policy problem 1, sub-problem 1 raises the issue of confusion about considering impacts of long-term health, but this does not capture the current issue sufficiently, particularly given the fact that FSANZ has a role in addressing long-term health. As a result, the Impact Analysis (IA) does not comprehensively address how FSANZ will address long-term health and preventable diet-related disease.

To help address this, public health needs much greater consideration throughout the entirety of the Act. Alongside other public health and consumer groups, we suggest a Public Health Test be incorporated in the Act (details of this test are included under final question in component 2.1).

Dietitians Australia is also concerned about the current challenges with the timeliness and number of proposals and reviews undertaken by FSANZ. Policy problem 2 fails to adequately capture the problems of the time and cost burdens to consumers as a result of this slow progress.

Dietitians Australia supports the decision to remove the 'null hypothesis' as a food regulatory system is obviously important for public health and safety. We recognise that changes are needed to modernise the FSANZ Act, ensure it is fit-for-purpose and meets its objective to protect public health, including long-term health outcomes. The status quo does not adequately protect the public's long-term health. Reform that reduces regulatory burden can be detrimental to public health so this should be considered when assessing the reform options.

We note concerns about framing the two Options 'retain the status quo' or 'modernise regulatory settings' as two distinct options. A number of the identified policy problems could be addressed without changing the Act or operational framework, such as changes to some resourcing. 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 without significant reform. Given this, these should not be considered independent options, as there will be overlap between the two. Where problems identified under status quo can be addressed without legislative or operational reforms, the modelling and cost benefit analysis should reflect this. For example, any increased funding proposed under Option 2 that does not require legislative change could also be applied under Option 1, with the benefit assessed independently.

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

Dietitians Australia recommends that the Impact Analysis consider sustainability and food systems security, including vulnerability to climate change and other disruptors, such as occurred with COVID-19. The food regulatory system has an important role to play in safeguarding food safety and 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? Please provide justification. (Free text)**

Dietitians Australia recommends that the sub-problems that have the largest impact on the health and wellbeing of Australians and New Zealanders receive the highest possible impact ratings. These include:

- Policy Problem 1, sub-problem 1: Unclear definitions have created confusion about how FSANZ should consider short-and long-term risks to health 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.

Other sub-problems do not have the same widespread risks to long-term health and should therefore not have equivalent or higher impact ratings than those dealing with long-term health impacts.

We have provided some further specific feedback on specific policy priorities below.

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

We recommend that this policy problem should be considered high magnitude (3), not moderate, as the impact and extent of the risks posed by sub-problems 1 and 2 can have significant impact on

public health and consumer outcomes. We note inconsistencies with the assessment of magnitude in other areas of the IA (specifically p89).

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

We suggest that sub-problem 3 be removed from policy problem 2 and included in 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 likely greater than suggested in the document for sub-problem 2. Less resourcing impacts on efficiencies and on the role FSANZ can play in supporting public health outcomes. As above, it is suggested that this policy problem should also include sub-problem 3 (resourcing constraints) currently under policy problem 2, which would further increase the magnitude of this 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

Dietitians Australia supports amending sections 3 and 18 of the Act to include a definition of public health and safety that will provide clarity about FSANZ's role in protecting against long-term risks to health when developing food standards. We support an amendment to section 3 of the Act to include a definition of 'protecting public health and safety' that encapsulates both acute and long-term health and an amendment of section 18 to ensure it aligns with this definition.

Dietitians Australia supports 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 - "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." We recommend the inclusion of the terminology "and the diet-related risk factors for them" following the term "disability" in the above definition.

FSANZ's role in protecting long-term health has previously been set out in a Ministerial Policy Statement and confirmed by both Ministers and the FSANZ Board. Dietitians Australia highlights that the impact of just enhancing the definition is unlikely to result in significant change, as this would not define 'how' FSANZ will consider long-term risks to health when undertaking its work. Dietitians Australia recommends greater consideration to public health is incorporated throughout the Act. The inclusion of a Public Health Test in the Act could help address this (further details under final question for component 2.1).

To support the enactment of the definition in practice, Dietitians Australia recommends that FSANZ include information on its consideration of short and long-term risks to stakeholders as part of all communications when developing standards.

**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

As noted in response to the previous question, the role of FSANZ in considering long-term health has already been clarified. Whilst Dietitians Australia notes the importance of ensuring the Act provides clarity on this definition, without work on 'how' this will be implemented, we remain concerned about its implementation.

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

Positive

Dietitians Australia supports the clarification of the definition of protection of public health and safety within the Act. This will provide legislative clarity to all stakeholders about the fact that FSANZ considers long-term risks to health when developing food standards. To put this into action and ensure a focus and commitment to achieving this objective of the Act, the Public Health Test should be incorporated in the Act (further details in final question for component 2.1).

**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?**

Dietitians Australia notes that the development of Ministerial Policy Guidelines involves rigorous processes. Section 18(2) of the Act can be amended to ensure that FSANZ must make decisions in line with Ministerial Policy Guidelines and all items that come before FSANZ, listed in s18(2)(a)-(d), are to be considered only when compliance with Ministerial Policy Guidelines is assured.

Dietitians Australia recommends that the fact that FSANZ considers and complies with Ministerial Policy Guidelines should be clearly communicated. To support greater transparency, this information should be publicly available on FSANZ's website and include details about how FSANZ has complied with the Ministerial Policy Guidance, describing the public health implications of compliance and non-compliance.

**Component 2.1.3**

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

Dietitians Australia supports greater recognition of Indigenous culture and food expertise in the Act.

First Nations and Māori people must be adequately consulted and involved in the development of Act provisions 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.

The current level of consultation with First Nations and Māori people and experts, and lack of detail around the examples of new provisions and language changes, leaves us uncertain about the impact that component 2.1.3 will have on better recognising Indigenous culture and expertise.

Dietitians Australia recommends specific consultation with First Nations and Māori people and experts should be a matter of priority to ensure that proposed changes to the Act incorporate Indigenous culture and expertise. Changes in the Act must reflect First Nations and Māori ways of being, knowing and doing and must be appropriate to the regulation of food as it relates to their culture and health.

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

Yes

As outlined in our previous response, Dietitians Australia recommends 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

Dietitians Australia supports amendments to the Act to ensure it meets its objective to protect long-term public health. Clarification of the definition of public health is an important reform element, but in isolation will not address the gap between the objectives of the Act and the practical application within food standards. Clear guidance must include a clear definition to ensure the consideration of long-term public health outcomes is embedded in FSANZ operations.

Dietitians Australia suggests that the Act is amended to include a set of considerations that FSANZ must take into account when setting priorities and when making decisions on proposals, applications, or standard reviews. The purpose of these considerations is to set clear and consistent expectations around how public health benefits and risks should be assessed in developing, reviewing, updating and adopting food standards.

Dietitians Australia supports the 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 [1];
- b) Estimated benefit of change to the food supply from the work under consideration.

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.

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[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.

## **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

Dietitians Australia appreciates that the introduction of a risk-based framework can present both opportunities and risks, but the information in the IA is too limited to support the application of a risk-based approach at this stage. For example, there are limited details on the framework itself,



including how it is to be applied, who is responsible for decisions and what the appeals mechanism would look like (if any).

From the limited information provided, the risk-based framework does not appear to produce an equivalent approach for decisions that would impact public health compared to those that impact industry. It appears from the IA (including details in Appendix D) that some industry/commercially driven decisions would be assessed as low risk whereas all public health decisions would be assessed as 'high risk'. The consequence of this is that the existing disparity between the approach to public health and industry decisions under the Act could worsen, affecting both the time it takes for decisions to be made and the outcomes of those decisions.

Dietitians Australia supports further consultation on the risk-based framework. This should commence immediately, allowing it to be developed alongside the Act review. Further consultation should include a focus on the risk criteria and assessment matrix, details on organisations whose assessments would be used as a basis for minimal assessment approach, decision making responsibilities and likely public health outcomes.

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

Dietitians Australia recommends that the proposed 'Public Health Test' (details in final question under component 2.1) be considered as part of the basis of the risk framework. The Public Health Test could provide some criteria; 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, as well as 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?**

Dietitians Australia notes that given the limited information presented, we cannot determine the impact that the introduction of a risk-based framework would have in practice.

#### **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

If a risk-based and proportionate handling of applications and proposals is to apply, it must consider public health. The limited details of the risk framework, as discussed in the previous response, suggests that many public health outcomes would be classified as high risk and would be likely to fall out of the remit of this option. This could result in changes being of benefit to the commercial sector rather than public health.

Dietitians Australia acknowledges that a number of international jurisdictions undertake rigorous risk assessments and in some areas of regulation, international risk assessments are adopted. However, the details in the IA do not provide assurance that public health considerations and impact will be adequately addressed when accepting international risk assessments. If the determinations of overseas bodies were to be adopted, there must be an assurance that these bodies have strong processes for managing conflicts of interest, such as occurs within the World Health Organization.



An expedited process for incorporating risk assessment from an international jurisdiction rather than simply accepting or adopting these assessments may be appropriate to mitigate risks.

Any such system must be transparent, credible and risk based. If FSANZ were to use work by international jurisdictions, the basis for FSANZ decisions must be publicly available on their website.

**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

Dietitians Australia recommends that if FSANZ were to recognise international standards automatically, such standards should only be harmonised where there are ideal outcomes for public health rather than standards that enable expanded availability of nutrient-poor foods. We note that this approach should not be for use with novel foods, given that the complete public health risk is not always understood as new products emerge. The option to harmonise food standards with international standards should only be given if they meet the 'Public Health test' (see previous responses under component 2.1).

Dietitians Australia notes there is limited detail in the IA to make an assessment of how this will work in practice. We therefore recommend further consultation be done on how this would be applied, including full consideration of public health outcomes.

**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

Dietitians Australia notes that there is limited information on how this will apply in practice, including what would be included in the minimal assessment of the minimal check pathway. Dietitians Australia highlights that this appears to prioritise commercial decisions as opposed to benefiting public health. It is our understanding that the risk assessment and evidence will not be open to public scrutiny, and this could pose a risk to upholding 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

Dietitians Australia notes in the IA that further work on any new pathways would be needed. We highlight the potential risks if new pathways are created that remove public consultation. To ensure public health outcomes are adequately considered and addressed in any new pathways, there will need to be assurance, such as through using the Public Health test, that would mitigate the risks of removing public consultation.

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

## Negative

Dietitians Australia notes that limited information is included on the new pathway options. If they are to proceed, more work would be needed. Dietitians Australia highlights that the limited information presented does not appear to ensure broad public health benefits.

The assumptions made in Appendix D suggest that public health decisions would be classified as 'high risk' and therefore easily fall out of potential new pathways to amend food standards. This presents the risk of 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.

Dietitians Australia recommends further details and consultation be provided 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?**

Prefer not to respond / I don't know

## **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

Dietitians Australia notes that there are both benefits and risks to changing decision-making arrangements. In the absence of detailed information on the risk framework in the IA, we cannot provide support for this option at present.

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

Dietitians Australia supports delegation of some decisions to improve efficiencies, provided an appropriate risk framework is in place. As noted in our previous responses, details are too limited at present to assess the appropriate use of a risk framework. We reiterate that any risk framework must adequately assess public health impacts. We recommend further consultation on the risk framework with specific questions about risk allocation for the purpose of decision-making. Any new risk framework and decision-making process should also 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

Dietitians Australia notes that in the absence of detailed information on the risk framework it is difficult to determine how streamlining decision-making arrangements may impact public health. If the development and application of a risk-based framework is done well and considers public health appropriately, the delegation of low-risk decisions could assist in streamlining decision-making arrangements and improve efficiencies.

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

No response.

**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?**

Prefer not to respond / I don't know

Dietitians Australia recommends FSANZ consult specifically with First Nations and Māori people and experts to understand what they need and want from the food regulatory system, including for traditional foods and ingredients.

We note that meaningful consultation is needed to ensure there is no risk of commercialisation and potential for exploitation of traditional foods by businesses that are not Aboriginal, Torres Strait Islander or Māori led.

**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

Dietitians Australia recommends FSANZ consult specifically with First Nations and Māori people and experts, to be guided on whether further guidance materials are necessary or how they may be better supported to engage with the food regulatory system more broadly. FSANZ must work with experts to better outline the traditional food assessment process, to ensure it is culturally appropriate and respectful of the food practices and knowledge of First Nations and Māori people. Guidance material developed with appropriate consultation, co-design and co-construction has the potential to support the safe entry of traditional foods to market.

**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

Dietitians Australia supports the adequate provision of resourcing to enable FSANZ to undertake more timely, holistic and regular review of standards to be more strategic and consistent in changes to food standards. Focusing on the impact on public health (through use of the Public Health Test) can help determine the reviews undertaken and their prioritisation.

Dietitians Australia notes that additional resourcing does not require the adoption of Option 2 and could also be 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 as described in our response to the question on methodology.

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

Yes

Dietitians Australia recommends the Act be amended to include statutory timeframes for standard reviews. Clear criteria should be established for how and when standard reviews are done. These reviews should support FSANZ's primary objectives as outlined in section 3 of the Act.

Dietitians Australia recommends 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 if gathering the necessary evidence takes longer than usual.

The IA proposes that Option 2 will result in up to 8 standard reviews a year but sets no mechanism to ensure the proposed reforms and no framework to govern how this would work in practice. Further details are also needed on whether FSANZ has the time and resources to accomplish the task.

**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

Dietitians Australia notes that FSANZ already has the capacity to develop guidelines and Codes of Practice. We do not support using these in place of regulation. Guidelines and codes of practice are non-binding. For both consumer safety and public health, the food regulatory system must be based on regulation. Dietitians Australia recommends that Codes of Practice and guidelines should be used only to address interpretation and application of regulations.

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

We know of no issue where this would have applied.

**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?**

No response

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

Negative

Dietitians Australia does not support the development of Codes of Practice and guidelines by industry for industry. Voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective (references below).

#### References:

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.

Lacy-Nichols J, Scrinis G, Carey R. The politics of voluntary self-regulation: insights from the development and promotion of the Australian Beverages Council's Commitment. *Public Health Nutr*.2019:1-12.

Knai C, Petticrew M, Douglas N, et al. The public health responsibility deal: Using a systems-level analysis to understand the lack of impact on alcohol, food, physical activity, and workplace health sub-systems. *International Journal of Environmental Research and Public Health*. 2018;15(12):2895  
Boyland EJ and Harris JL. Regulation of food marketing to children: are statutory or industry self-governed systems effective? *Public Health Nutrition*, 2017; 20(5):761-4.

## **Component 2.2**

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

Yes

We note that the reform options in the IA will not result in more proposals being progressed. Specifically, 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.

To improve this, Dietitians Australia recommends the Act be amended to include statutory timeframes for proposals. We acknowledge that proposals are broader, more complex and require more nuanced consultation than applications, however this should not result in proposals being delayed and extending over many years. A timeframe should be used to support the timely and efficient progress of proposals. The timeframe should allow sufficient time for FSANZ to identify, and if necessary, generate evidence to support decision-making.

In line with our recommendation for standard reviews, 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.

## **Component 2.3**

### **Component 2.3.1**

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

Yes

Dietitians Australia supports amending the composition of the FSANZ Board to increase flexibility and reflect contemporary governance processes. We support the recommendations of the 2014 review and the inclusion of additional skills that would support good governance and oversight. We note 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. This amendment will aid the board in adequately achieving contemporary governance processes, allowing decisions to match the intent of the Act as it relates to Indigenous knowledge and culture.

**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

Dietitians Australia does not support changing the current nomination process to an open market one, particularly for the public health specific positions. We do not recommend that the number of public health representatives on the Board be reduced. Removing statutory requirements for the Minister to seek nominations from prescribed organisations could potentially pose a risk to the public health and consumer positions. With limited detail provided on how the open market process would work in practice, an open market process introduces potential risks. If the statutory requirement is removed, there must be clear and transparent criteria for the mix of skills among Board members and this must include public health expertise. All conflicts of interest must be strictly managed, including any real or perceived conflicts for public health nominees.

**Component 2.3.2**

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

Positive

Dietitians Australia supports removing the option for applications to be expedited from the Act. This will provide a level playing field for all applicants.

**Component 2.3.3**

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

Prefer not to respond / I don't know

Dietitians Australia notes the considerable challenges FSANZ faces in resourcing and funding. It is critical that FSANZ has ongoing financial viability to ensure it can undertake its operations and meet the objectives of the Act. Amending the Act to introduce an appropriate industry wide cost recovery structure could provide a reliable and ongoing source of known funding for FSANZ.

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

No response

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

No response

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

Negative

Dietitians Australis notes that compulsory fees may not be as financially sound as an industry wide levy for resourcing FSANZ. We do not support an option to pay for expedited applications under any fee structure.

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

No

Dietitians Australia notes that Best Practice Element 3 of the IA highlights that cost recovered services frequently represent a minority funding stream for standard-setters. We support this as appropriate to ensure FSANZ maintains its independence.

#### **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

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

No response

**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

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

Prefer not to respond / I don't know

**How would this need to be implemented to be successful?**

No response

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

Other



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

Prefer not to respond / I don't know

**How would this need to be implemented to be successful?**

### **Component 2.3**

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

Prefer not to respond / I don't know

### **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?**

Dietitians Australia supports FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. Public health issues, in particular long-term health and preventable diet-related disease should consistently be prioritised.

We note that mechanisms are already in place for FSANZ and FMM to work together. For example, FSANZ attends the FMM and there is a standing agenda item to discuss FSANZ's workload and priorities. Given this mechanism is all already in place, it is available to FSANZ under Option 1.

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

As public health is the priority objective of the Act, Dietitians Australia recommends that the Public Health Test (noted in response to component 2.1) should be used to guide the prioritisation of all FSANZ work.

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

No response

#### **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

Dietitians Australia notes that FSANZ already meets regularly with jurisdictions at the FSANZ jurisdictional forum and attends the FRSC policy development working group meetings. These opportunities for collaboration should be continued. We note these mechanisms are all already in place and available to FSANZ under Option 1 (status quo). Any enhancement of these engagements to reduce duplication of effort and missed opportunities to manage risk is available under both options.

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

Dietitians Australia recommends that FSANZ receive adequate resourcing to ensure it undertakes its core functions, including regular standard reviews and efficient processing of proposals. Adequate resourcing will also ensure FSANZ has capacity to collaborate effectively with the FRSC and the FMM

### **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

Dietitians Australia recommends that Australia has a comprehensive and regular food and nutrition monitoring and surveillance system in place (Reference: Dietitians Australia Federal Budget 2024-25 submission <https://dietitiansaustralia.org.au/advocacy-and-policy/submissions/federal-budget-2024-25>)).

Dietitians Australia supports FSANZ playing a role as a database custodian to improve intelligence sharing across the regulatory system. To ensure effectiveness, data linkage and sharing with other key groups such as the Australian Bureau of Statistics and Australian Institute of Health and Welfare should be established, with the database being publicly available.

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

Collection of data is vital to monitor the work of the food regulatory system and nutrition's overall impact on public health outcomes. Data can help identify priorities, develop policy options and evaluate implementation. Consumption data is critical in assessing proposals and applications, and ensuring such processes address public health and drive better health outcomes for Australians and New Zealanders.

Dietitians Australia recommends developing 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
- Food safety
- Sales data
- Dietary intake (consumption data)
- Nutrition-related health outcomes, as they relate to overall burden of disease
- Food security data

Dietitians Australia notes that FSANZ will play a key role in curating data, although the collection and use of this data goes beyond the responsibility of only FSANZ. A comprehensive nutrition monitoring and surveillance system could be housed with FSANZ or other entities, such as the new Centre for Diseases Control. We also note that additional resourcing for FSANZ is needed for their role as a database custodian.

#### **Component 2.4.4**

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

Yes

Dietitians Australia supports the establishment of sharing arrangements to support FSANZ operations.

##### **What should be the focus of such information sharing arrangements?**

Dietitians Australia notes that sharing information could be used to form part of the initial background research required during development of standards. However, such information and its application will need to be relevant in the Australia and New Zealand context.

#### **Component 2.4.5**

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

Yes

Statements of intent alongside the Food Standards Code can be helpful for stakeholders to better understand the aim of the standards. Standards should be written in plain English to reduce the potential for misinterpretation.

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

No response

#### **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

Dietitians Australia recognises that there is some benefit in FSANZ being able to provide additional interpretive guidance to industry, particularly for smaller businesses. If resourcing remains limited, 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

Dietitians Australia supports amending the Act to ensure that FSANZ consults First Nations and Māori peoples appropriately and recognises their food expertise. This will involve a broader consideration of the impact of the food regulatory system and individual food regulatory measures on First Nations and Māori peoples. Consultation is imperative to ensuring the food regulatory system includes the diverse needs of the community, relating to nutrition, culture, food security and public health.

Dietitians Australia recommends a thorough consultation process with First Nations and Māori groups to determine their specific requirements. We also recommend 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

Dietitians Australia supports enhanced collaboration between FSANZ and jurisdictional enforcement agencies to ensure consistent interpretation and greater enforcement of standards that promote better public health outcomes. Effective data sharing as outlined in component 2.4.3 would act as an enabler for collaboration between FSANZ and jurisdictional enforcement agencies.

**Component 2.4**

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

No

**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

To provide further feedback on section 6-net benefits, Dietitians Australia recommends consulting organisations with expertise in economic evaluations.

Dietitians Australia notes there are two options for consideration. However, as raised in previous responses some of the policy problems presented could be addressed without changing the Act or operational framework and thus could apply to both options. For example, if Government funding is assumed to increase in Option 2 without changes to the act or operational framework, this should

equally apply to Option 1. Additionally, although the cost benefit analysis presents the benefit of Option 2 as depicting a scenario where all reforms are adopted in full, this is unlikely to occur in practice.

Dietitians Australia recommends that the cost benefit analysis should reflect public health costs and benefits. Specifically, we recommend considering more detail on the methods and assumptions relating to the costs and benefits for consumers and government. This should include:

- A separate breakdown of the specific costs and benefits for all impacted stakeholders for each type of FSANZ work (in practice, this means not classifying proposals, reviews and applications as all having the same public health benefit for consumers)
- Details on the specific public health benefit
- Details on short- and long-term public health benefits
- All costs and benefits for both consumers and all levels of government clearly quantified for their associated social and economic impacts on health and the healthcare system.

Further details are included in the following questions in this section.

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

Dietitians Australia recommends consultation with peak bodies for First Nations and Māori peoples to provide advice on their growth expectations.

#### **What are the current delay costs to industry?**

Dietitians Australia is unable to provide details on the data regarding delay costs to industry. However, we note that further detail is needed on the delayed costs in the analysis. The costs used for the analysis should be established independently. This is in line with the requirement of the Australian Government Guide to Regulatory Impact Analysis (2020) that data sources and calculation methods used to calculate regulatory compliance burden must be transparent with any gaps or limitations in the data discussed and assumptions disclosed.

Dietitians Australia strongly recommends that consumer safety and public health should be prioritised over commercial interests.

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

No

Dietitians Australia does not have additional data useful for characterising the costs and benefits of current regulatory settings. However, we note that data and expertise from public health and consumer groups is available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health. We recommend engagement with these experts.

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

Prefer not to respond / I don't know

#### **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

As provided in our response to this question for Option 1, Dietitians Australia recommends that the cost benefit analysis appropriately reflects public health costs and benefits. Specifically, we recommend more detail on the methods and assumptions in relation to the costs and benefits to consumers and government.

Dietitians Australia seeks clarification on how the 'risk-based' approach improves public health outcomes. For example, is this based on having more time for proposals, noting that the model keeps the number of proposals consistent? We also seek clarification on whether the cost of FSANZ being less rigorous in some areas following a risk-based approach has been quantified, in particular on public health outcomes.

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

No

Dietitians Australia does not have additional data useful for characterising the costs and benefits of current regulatory settings. However, we note that data and expertise from public health and consumer groups is available across Australia and New Zealand to support a Cost Benefit Analysis that appropriately reflects the costs and benefits to public health. We recommend engagement with these experts.

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

Yes

Dietitians Australia suggests that the conclusion of the net benefits section be reviewed by organisations with greater expertise in economic evaluations. At present, the summarised outcome of the Net Benefit section is that Option 2 is more cost effective than Option 1 in delivering public health benefits. However more detail is needed on this analysis, particularly to determine whether the public health benefits proposed will occur.

The current cost benefit analysis does not consider the burden of disease throughout its entirety. Modelling should be included on the costs of diet-related diseases that may result from the reform options. This includes quantifying the public health impact of an increasing number of products entering the market that increase the risk of diet-related diseases in both reform Options. The poor health attributable to delays in food regulatory measures that protect public health should be considered in both models.

The assumptions made for the costs of proposals are based on FSANZ to be able to process more proposals in a timely manner. However, there is no mechanism to ensure this, and the modelling is based on the same number of proposals being completed (n=3). Delays in proposals have not been modelled in Option 2, and with no mechanisms to reduce delays, this should be included.

The modelling at present assumes that all applications have a consumer benefit, but it is unclear whether there is data that demonstrates this to be an accurate assumption. The analysis should better reflect this problem.

Dietitians Australia recommends the cost to industry of confirming FSANZ's role in considering long-term health be removed as a cost. This is an integral role for FSANZ, and the analysis should not consider it a cost to industry.

## **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

Dietitians Australia notes that some of the reforms suggested under Option 2, could be available to FSANZ under Option 1 (status quo) without changing the Act or operational framework. This should be considered when comparing the two Options. The current methodology weights the results heavily towards Option 2. The limitations in the policy problems themselves (see responses in section 3) also limit this assessment.

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

Prefer not to respond / I don't know

Dietitians Australia notes inconsistencies in the IA of the negative impact rating of policy problem 1. On page 89, the negative impact of the policy problem rates a 3 (high) in the text and a 2 (moderate) in the table. This should be rectified.

We defer to other public health organisations to provide further details on the ratings assigned to each of the sub-populations.

## **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

Dietitians Australia recognises the work done to assess the delivery risks. However, a major factor missing is sufficient resourcing to support FSANZ organisational capacity to manage workload and address and manage risks related to long-term health impacts in a timely matter. This risk is present for both Option 1 and 2. The risks of having no statutory requirements for proposals and reviews is also a major problem.

Given that not all components are likely to be enacted in full in the review, the risk of each component should be assessed separately to inform decision making.

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



No

Dietitians Australia recognises that the IA concludes that Option 1 is riskier than Option 2. A number of the risks under Option 1 can still be addressed under the status quo and Option 2 won't necessarily resolve all the risks, a fact that must be considered.

Dietitians Australia assesses the risks on population health of unsafe foods entering the market and the introduction of more unhealthy foods into the market as major.

We recommend the risk assessment is reviewed in light of the following comments.

- 'Confusion around the objectives and scope of FSANZ will perpetuate, meaning that risks relating to public health and safety- particularly long-term health- are not well managed'. Although Option 2 proposes to clarify the role of long-term public health within the definition, that is already the responsibility of FSANZ. Without additional support in Option 2 to implement this role, significant changes will be unlikely. Furthermore, some of the proposed reforms will remove oversight, which could heighten public health risks.
- 'Alignment of definitions could inadvertently widen the scope for FSANZ and its role in managing public health risks'. As noted above and throughout our response, this is already the role of FSANZ. As such, we disagree that with FSANZ already having a legislated role in mitigating public health risks, this should not be considered a risk.
- 'Applying a risk framework to guide process and decision-making may lead to unsafe foods entering the market'. We support the consequence rating for this risk but suggest the likelihood should be assessed as higher given the proposed reforms and the implications of less oversight and less regulation. Furthermore, this risk should separately consider the impact on short term health outcomes (food safety) and long-term health outcomes.
- 'Establishing new pathways to amend food standards could reduce the level of oversight and scrutiny of products in the pre-market phase, introducing higher risk to population health and safety'. We support the consequence rating for this risk but suggest the likelihood should be assessed as higher given the proposed reforms and the implications of less oversight and less regulation.
- '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 suggest the consequences of this would be higher than moderate-minimum, given this has potential to undermine confidence in the food regulatory system.
- '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 acknowledge that resourcing constraints means that a subset of functions will continue to be prioritised. However, under Option 2, without statutory timelines for proposals and reviews, this risk is unlikely to be adequately addressed.

## Section 9 - Evaluation of the preferred option

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

Yes

### Other comments

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

Yes

Dietitians Australia is the national association of the dietetic profession with over 8500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for the profession and the people and communities we serve. Dietitians Australia appreciates the opportunity to continue to engage in the review of the Food Standards Australia New Zealand Act 1991 (Cth).

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians have an important role in the food system to support the public in making healthy food choices and companies with product formulation, marketing, consumer education and compliance.

The food regulatory system in Australia and New Zealand must put consumers first and protect public health in both the short and importantly long-term from poor health outcomes associated with our food systems. Dietary risk factors contribute significantly to the burden of disease in both countries and the food regulatory system plays a role in reducing their impact. Dietitians Australia recognises the complexity of our food system and that a comprehensive approach is needed to improve nutrition-related health outcomes. Ensuring the FSANZ Act is contemporary, fit-for-purpose and meets its objectives to protect public health, will play a vital role in improving nutrition related health outcomes.

FSANZ plays a critical role in improving and shaping the food supply. We acknowledge 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 that other mechanisms do not.

This current opportunity to ensure FSANZ's role in improving the food supply and the resulting public health outcomes needs to be considered. Dietitians Australia recognises the significant work undertaken in the development of this Impact Analysis and acknowledges that some of our recommendations provided on the Regulatory Impact Statement, including our objection to the proposal that the objective of FSANZ be expanded to recognise trade as a core goal of FSANZ, have been addressed. We wish to reinforce the need to revise the Act for the benefit of public health over commercial benefit.

Taken in their complete form, the full suite of reforms in Option 2 of the IA has the potential to compromise the capacity of FSANZ to meet its legislated, priority objectives to protect public health and safety, and to support consumers to make informed choices.

### **Resourcing of FSANZ**

Dietitians Australia acknowledges the significant resourcing constraints experienced by FSANZ. FSANZ must be adequately resourced to deliver on its existing responsibilities, in addition to any new functions proposed.

The IA clearly sets out that FSANZ operating budget has declined in real terms and that over 90% of the budget comes from government funding. Governments should be adequately funding FSANZ to perform its functions. A strong enabler for FSANZ would be a commitment from all governments to better fund FSANZ to undertake its functions, which could be done under the status quo. We acknowledge that this may be 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**

Dietitians Australia acknowledges that the previous RIS explored the option to extend the objective of FSANZ to promote food sustainability, but this has been excluded from the analysis. Dietitians Australia strongly opposes this removal.

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 opportunity 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.

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.

Dietitians Australia provided support for the inclusion of sustainability 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 clearly demonstrates this with actions that address food security. Many of the strategies' actions must have the support of the food regulatory system to be realised. The current revision of the Australian Dietary Guidelines will also include a focus on sustainability.

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.

### **Regular reviews of the Act**

To ensure the Act remains contemporary, fit-for-purpose and meets its objectives to protect public health, a process to review the Act at more regular intervals is needed. Implementation of the changes in the Act will need to be reviewed to ensure they are achieving the desired outcomes.

### **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.**