



**Public Consultation on the Review of the Food Standards Australia New Zealand Act 1991
(FSANZ Act Review) Impact Analysis – response from Food Intolerance Network
10/03/2024**

Summary of what we asked for:

In the view of consumers, they are:

Genuine engagement with the expectations of consumers so as to amend legislation and practice to create:

1. a central unit to develop national food policy that considers emerging and strategic issues in food safety, sustainability, security and two-way trade;
2. strategic direction and funding of food research in all aspects including a wider definition of safety for consumers which covers nutrition, both short and long-term physical and mental health, and effects on attention and behaviour;
3. centrally coordinated education for consumers and industry on food, food-health claims and food-related public health objectives;
4. development and approval of food standards at a national level with sunseting ensuring regular re-examination of new scientific evidence;
5. implementation and competent enforcement of food standards nationally and for import/export trade, including penalties for food fraud and crime; and
6. a trusted system to advise, survey and monitor failures and achievements of policy objectives.

To achieve these objectives, consumers seek creation of a National Food Authority, perhaps reporting to an Australian Food Council, and the imposition of levies on the food and grocery industry to help address critical research, monitoring and surveillance issues.

3. Four policy problems to solve

Consultation questions

- Does the current method used to calculate the impact of a problem provide a robust approach to identifying priority issues?

Yes, excellent thinking is evident in attempts at quantifying this formidably complex area and the result is comprehensive. Congratulations on trying to tie it down.

- Are the ratings assigned to each of the sub-problems and ultimately the problem appropriate? If not, why?

Yes, although the fact that the extensive rating system was only able to discriminate Policy Problems into two levels (2 and 3) gave some pause.

5. Options for reform

Policy 1 Consultation questions

Component 2.1.1 | The definition of ‘protection of public health and safety’ within the Act could be clarified to be in line with the current policy guidance

- 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?

The Food Intolerance Network supports an explicit definition of safety for consumers that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour. The current practice does not cover several of these areas although consumer expectation is that it does.

The Ministerial Policy Statement is comprehensive: “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.”

The world’s largest scientific review, involving nearly 10 million people, recently found that UPFs (ultra-processed foods) are associated with higher risks of multiple health problems and the Global Burden of Disease Risk Factor Estimate from 1990 to 2016 revealed that diet was the leading cause of death in the USA.

- 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?

If actually applied, then FSANZ will need to change to a different mindset and access a wider range of expertise than that currently utilised. Then it will change FSANZ's conceptual approach in all aspects positively.

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

If the new definition is actually applied and resourced, it will require skills and expertise not currently within FSANZ, broader access to scientific research, and ability to consult more widely. This will cost more but is strongly supported by consumers.

Component 2.1.2 | There could be greater clarity around how ministerial policy guidance is reflected in the development of food standards

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

One would hope that changes to the way FSANZ communicates would occur as a consequence of changes under Components 2.4.1 and 2.4.2, and help everyone understand how certain regulatory actions have been formulated.

But communicated to whom? Consumers see such communication as of little significance outside the regulatory environment. For instance, if Ministers direct creation of say a traffic light system, the fact that it has been suggested by Ministers is mainly of interest to FSANZ and other bureaucrats even though it does impact on us all eventually. That said, there is virtue in giving clear reasons for each regulatory decision.

Component 2.1.3 | Language within the Act could be updated to be more culturally inclusive

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

While this is important, the highest priority is food safety.

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

No comment.

Policy 2 Consultation questions

Component 2.2.1 | A risk-based framework and approach could be introduced to guide the development of food regulatory measures

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

The indicative risk management framework raises some concerns for consumers. In particular, there needs to be explicit consumer input into Extent of risk, Scope of impact and Existing evidence given that past FSANZ decisions have ignored widespread consumer concerns. The peculiarly narrow definition of food safety at present has allowed much information under all three Criteria to be dismissed. The Food Intolerance Network members intend that the change in definition will produce change in the risk management framework as a matter of course.

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

The criteria proposed are comprehensive enough if the new definition of food safety (under 2.1.1) is implemented and resourced.

As for evidence, previously there has been a lot of picking and choosing with a bias toward the food industry rather than consumers, partly guided by the present very narrow definition of food safety. Take for example the fact that all foods containing most artificial colours must have a warning in the EU (*“may have an adverse effect on activity and attention in children”*) but the same scientific evidence that convinced EU (and Californian) regulators to act was dismissed in Australia/NZ. Examples could be multiplied.

The Criterion on Extent of Impact would also need to at least consider consumer expectations, which run well beyond the current functions of FSANZ. One could ask *“Will it pass the pub test?”* – in other words, do consumers see the new proposal of greater risk than do regulators and why?

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

Using a risk-based framework, together with other changes like taking control of priorities for standard development (2.3.2 and 2.3.3) and addressing very inadequate FSANZ resourcing (2.2.5), would allow more rational decision-making. Nevertheless, some process is needed to ensure there is public and consumer oversight of the Automatic adoption and Minimal checks pathways suggested in Figure 9.

Component 2.2.2 | New pathways to amend food standards could be introduced

- 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?

There are some classes of assessments where consumers are not interested and there is clearly low risk. By having a system that expedites these, resources could be freed up to undertake more strategic assessments and reviews, to the benefit of consumers.

But there are others where consumers do need to be consulted because they are not confident that processes would recognise impacts on consumers. A pressing example is that of two coming Processing Aids. One is an enzyme which increases the level of flavour enhancer E631 Disodium-5'-inosinate in foods, and a second is an enzyme which converts the amino acid L-glutamine to flavour enhancer E621 monosodium L-glutamate inside the food *“in the manufacture of glutamic acid-rich*

yeast extracts...” Neither of these will appear on any label yet there are many consumers who would react to increased levels of the chemicals produced. Therefore there must be some public and consumer review mechanism.

There would also be picking and choosing in deciding which international jurisdiction’s assessments to accept. In the past, decisions about whom to “harmonise” with have generally favoured industry over consumers. Again, consumers need to be in the loop formally.

- 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?

Consumer concerns turn on the word “appropriate”, so beloved by bureaucrats and Ministers. Who decides? If the EU does not approve a standard but USDA does, the food industry and probably FSANZ will choose the USDA version. This suggestion has the possibility of improving efficiency and freeing resources for better application, but the devil will be in how it is implemented. With “appropriate” consumer checks and balances, this could be supported.

- 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?

This suggestion has the possibility of improving efficiency and freeing resources for better application, but the devil will be in how it is implemented. With “appropriate” consumer checks and balances, this could be supported.

- 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?

This suggestion could certainly help, subject to the provisos mentioned in earlier answers, principally that there must be some public and consumer review mechanism of such legislative changes.

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

Consumer trust has eroded to the point that the Food Intolerance Network would, at a minimum, require some forms of public and consumer oversight of the decisions about what is “appropriate” and “proportionate” in this context. Subject to such checks, this proposal could be supported.

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

A critical emerging issue in this area brings into question whether regulation through food standards will actually work in the future and what alternate pathways need to be developed.

The issue is this: due to consumer concerns about the health risks of Ultra-Processed Foods (UPFs) including food additives, the Clean-Label movement aims to hide **additives** from consumers by removing chemical sounding names and numbers and replacing them with health claims and innocent-sounding **ingredients**.

This means that consumers can no longer rely on regulators to tell them what is in their food. This undermines the whole concept of regulating certain additives on safety grounds, and means that previously regulated additives are being used in unregulated amounts.

This Clean-Label approach by the food industry is gaining momentum to the extent that, for some previously regulated additives, there are now far more ways in which they are added as unregulated ingredients than as regulated additives. Further detail can be provided on this claim if required.

Having food standards *per se* does not address this issue where both the presence and amount of an increasing number of food additives evade regulation.

Another pathway that could be considered under this heading is ensuring that all food standards have sunset provisions to ensure regular re-examination of new scientific evidence. For example, the US Food and Drug Administration, Codex Alimentarius Commission and European Medicines Agency all conduct ongoing evaluations and revisions of existing standards to improve safety, efficacy and impact.

Component 2.2.3 | Decision-making arrangements could be streamlined

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

The need for Ministers to sign off on ALL changes is clearly an ancient practice that needs to be addressed by some hierarchy of importance in decisions, while retaining the right for Ministers to call in particular changes for wider scrutiny. This change is supported.

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

As raised in 2.1.1, changes like this will, under a new definition of food safety, require skills and expertise not currently within FSANZ, require broader access to scientific research, and require an ability to consult more widely. How consumer views will be heard needs to be explicitly stated.

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

If this change frees up limited FSANZ resources to undertake more strategic reviews and updating of standards to the latest scientific evidence, then it is supported by consumers. Somehow consumers need to become confident that such processes would recognise impacts on consumers, perhaps by an annual report on the use of such a streamlining pathway checked by the Board and available publicly.

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

Delegation will require skills and expertise not currently obvious within FSANZ, broader access to scientific research, and ability to consult widely and openly. The system that appears to work in therapeutic drugs regulation, and in agricultural and veterinary chemicals regulation, relies heavily on long-term employment of experienced scientists, not career generalists moving from department to department for experience and promotion.

Component 2.2.4 | Legislative change and greater guidance material could support bringing more traditional foods to market

- 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?

Should do.

- 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?

Sounds like a worthwhile endeavour if properly resourced.

Component 2.2.5 | FSANZ can be resourced to undertake more timely, holistic and regular reviews of standards

- 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?

See under 2.2.2 the issue of whether the approach of using food standards *per se* will actually work into the future, given Clean-Label practices by the food industry to evade regulation and so avoid telling consumers about both the presence and amount of an increasing number of food additives.

Nevertheless, increasing resources for FSANZ is strongly supported by consumers so that FSANZ can carry out regular re-examination of new scientific evidence supporting in food standards. As raised in 2.2.2, sunseting provisions for food standards would improve safety, efficacy and impact as is the case in USA and EU and for Codex.

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

Again, thinking needs to be wider than prescriptive food standards, given changes occurring in the food industry worldwide, because standards are too blunt an instrument unsuited to regulating hidden additives. Initiatives to bring unregulated additives into regulation will be needed, such as by requiring free glutamate contents to appear on labels, or insisting that functional ingredients carry the number of the previously regulated food additive to which they are chemically identical. To do otherwise is indefensible in the scientific sense and denies consumers what they expect from food regulation.

This Clean-Label approach is spreading quickly through the food industry but is a form of food fraud since it is done simply to mislead consumers.

See further comment under 2.4.6 as Guidelines might be a more flexible approach to this particular problem.

Component 2.2.6 | Codes of Practice and guidelines could be increasingly used to complement food standards

- Would the use of Codes of Practice and guidelines to 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?

This approach is supported but one hopes that there would be better resourcing of enforcement by States when required. Poor enforcement is a major concern for frustrated consumers.

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

As submitted in 2.2.5, a Code of Practice could be used very successfully to bring unregulated additives into regulation as needed, such as by requiring free glutamate contents to appear on labels, or insisting that functional ingredients carry the number of the previously regulated food additive to which they are chemically identical. To do otherwise is indefensible in the scientific sense and denies consumers what they expect from food regulation. Guidelines under 2.4.6 might be a more flexible approach. If all members of the food industry were subject to the same codes, removing the competitive aspect, such Codes are more likely to be successfully implemented.

At present, for example, of the 19 ways in which propionate preservatives E280-283 can be added to food, only 8 are regulated by food standards and must appear on labels; of the 131 ways in which glutamate flavour enhancers E620-625 can be added to food, only 12 are regulated by food standards and must appear on labels; and of the 14 ways in which nitrate/nitrite preservatives E249-252 can be added to food, only 8 are regulated and must appear on labels. This practice is spreading and is designed to fool consumers and avoid regulation.

- 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?

The risk framework appears suited to development of Codes of Practice, subject to the points raised about the framework in 2.2.1. These were the need to at least consider consumer expectations (do consumers see the new proposal as more risky than regulators and why?) and ensure there is some process so that there is public and consumer oversight of Automatic adoption and Minimal checks pathways.

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

Codes and guidelines might help industry considerably because they understand what problems could be usefully addressed in this manner, particular across several jurisdictions. But a parallel pathway is required to address the particular concerns raised by consumers which would not be priorities for the food industry, for example using Codes of Practice to bring unregulated additives into regulation, and having functional ingredients carry the number of the previously regulated food additive to which they are chemically identical. If all members of the food industry were subject to the same codes, removing the competitive aspect, such Codes are more likely to be successfully implemented.

Other

- Are there other initiatives that should be considered in this component?

Current reviews of standards are extremely process oriented. One wonders whether a workshop approach would more quickly gather the required perspectives and ownership of the changes. In other words, be creative in more outcome-oriented processes.

Policy 3 Consultation questions

Component 2.3.1 | Outstanding recommendations from the 2014 review of the FSANZ Board could be implemented

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

The present processes for Board membership need to be modernised and change would have the support of the Food Intolerance Network. This Network has been in existence for over 30 years, has a current membership of 21,156 families, and is the largest consumer organisation focused on food in Australia and New Zealand. Yet in that time, only twice has there been contact with Board members directly seeking our views. At Network request representatives did meet one Chairperson and there have been meetings with various FSANZ CEOs. The Network has never been consulted about prospective nominees to the Board. This legislative review itself accepted a 26 page submission three years ago without any subsequent contact from consultants. This seems a waste of experience and access to informed and concerned consumer viewpoints.

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

Yes.

Component 2.3.2 | The expedited approvals pathway could be removed to address workload prioritisation

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

The present ability of those companies with money determining priorities for FSANZ workloads seems counter to the reason that FSANZ exists and removing that option has our full support. There is also a danger of regulatory capture with this practice, on the basis that “who pays the piper will call the tune.”

Component 2.3.3 | To generate more sustainable revenue, cost recovery could be expanded for work that benefits industry

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

First, any levy should be applied not only to standards development but more broadly to help address critical research, review, education, monitoring and surveillance issues. It could also be applied to provide advice to food companies on interpretation of standards. Such a levy would allow

expansion of the functions of FSANZ to better meet the expectations of consumers and all other stakeholders.

Second, it has long been our view that industry should pay for what is effectively free insurance. Those affected by food and food additives cannot sue food companies for illness because the ingredients have been approved at the Commonwealth level. Such security should come at some cost. It was surprising to find in this review that only 4% of FSANZ revenue comes from cost recovery and that needs to be addressed.

Thus the impact would be substantial in adequately resourcing those who regulate a \$132 billion industry that employs over 270,000 people and who presently pay a tiny fraction towards that regulation.

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

The suggestion made appears balanced - "A levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia" by revenue. The net would need to include supermarkets and to take support and advice from the Australian Food and Grocery Council. Food growers would not be included as many of them are already in various levy arrangements. Transport and distribution companies should probably not be included. As for administration, the response to the next question details how this has occurred effectively for another sector for nearly 70 years.

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

At the request of nearly all sectors of agriculture, levies have been collected on commodities and products that are produced within Australia since at least 1957. It is an accepted part of agriculture that the \$500 million coming from levies contributes towards the services provided by government such as research and development, extension services, marketing, residue testing, and biosecurity emergencies. Industry bodies help disburse this money to ensure ownership of the results.

The current levy rates and range of commodities can be seen here <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates> and could provide a guide towards developing an equitable system for food beyond the farm gate.

Such a levy could be scaled to the size of the enterprise paying. Thus \$0-20 million revenue might be set at 0.20% of the revenue, \$20-70 million at 0.10% of revenue, or by some formula to avoid steps. Modelling would allow equitable level to be determined. A back of the envelope calculation suggests this might raise ten times more than current industry contributions towards regulation, say about \$10 million per annum or half of FSANZ's current reduced budget.

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

Around 350 years ago a French finance minister famously declared that *"the art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing."* There will be hissing, but also pressure on FSANZ to sharpen their processes in return for greater revenue.

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

Consumers have long expected that if there were side-effects from foods then government would tell them, but this education role has never been systematically undertaken. For instance, even the conservative World Health Organisation has admitted that some 20-30% of children react to sulphite preservatives (220-228) with asthma symptoms while Australian research has found that up to 65% of asthmatic children are affected. But in a 2008 Network survey of 634 people, 67% had never heard that fact. This also means that they did not understand why there are mandatory warning labels on products containing above 10ppm sulphites.

Why require a mandatory label if consumers have no idea why or what action they should take? This role should not be left to unpaid volunteers.

Given rising consumer concerns over Ultra-Processed Foods (UPFs) and their links to all causes of mortality, this education role could perhaps be taken up on a cost-recovery basis, providing materials to schools, adults etc.

Component 2.3.4 | Some services could also be cost recovered from government agencies

- 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?

The \$13,000 average cost of each food recall coordination was astonishing, particularly as it is not a cost to the industry and amounts to free insurance. Agricultural levies (examples in 2.3.3) have long been used for biosecurity emergencies and food levies should be applied in the same manner, rather than the Commonwealth and States/Territories picking up the entire tab.

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

See comments under 2.3.3: “A levy could be placed on select food businesses to support the ongoing work of FSANZ, such as the largest 5,000 food businesses in Australia” by revenue. The net would need to include supermarkets and to take support and advice from the Australian Food and Grocery Council. Food growers would not be included as many of them are already in various levy arrangements. Transport and distribution companies should probably not be included. Such a levy could be scaled to the size of the enterprise paying. Thus \$0-20 million revenue might be at 0.20% of the revenue, \$20-70 million at 0.10% of revenue, or by some formula to avoid steps. Modelling would allow equitable level to be determined.

- 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?

Assuming this question relates to additional project work other than food recalls, such as surveys, FSANZ should as a matter of best practice seek contributions from other jurisdictions for extra work.

Expanding cost recovery to States/Territories might also have a positive benefit by putting pressure on them to surrender some enforcement powers so that these powers might be used nationally and more rationally than presently.

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

Agricultural levies (examples in 2.3.3) have long been used for biosecurity emergencies and food levies should be applied in the same manner, rather than the Commonwealth and States/Territories picking up the tab.

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

That is up to FSANZ, who are most experienced in food recalls, but experience with application of levies to biosecurity emergencies suggests that partial outsourcing for such episodic work might work.

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

As suggested earlier, the cost of food recalls should come from a central food levy rather than providing free taxpayer “insurance”, therefore no separate annual recall levy is required.

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

Only a small 10% of FSANZ revenue currently comes from other governments (excluding New Zealand which contributes 8%). In an ideal world, Commonwealth and State Ministers might agree to a plan which assigned agreed proportions of costs to the various jurisdictions for particular work, such as a national dietary survey. Is FSANZ really a price-taker in such matters?

Expanding cost recovery to States/Territories might also have a positive benefit by putting pressure on them to surrender some enforcement powers so that these powers might be used nationally and more rationally.

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

With a great deal of committee work and “hissing”.

Other

- Are there other initiatives that should be considered in this component?

Not from the Food Intolerance Network.

Policy 4 Consultation questions

Component 2.4.1 | Mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting could be implemented.

- Would establishing mechanisms to enable FSANZ and FMM to undertake periodic joint agenda setting lead to a shared vision of system priorities?
- How would this need to be implemented to be successful?

One can only hope for a shared vision. Having worked at this level, NSW and Victoria as the largest States exercise most power and seek always to shift costs to the Commonwealth while maintaining their own priorities and powers. Mingle this with shifting conservative/progressive politics at both levels and ... one can only hope.

So it will be implemented carefully with many committees and presumably much of this is already occurring.

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

It is not clear how either party would obtain good input from consumers as to the issues to which they would give priority. FSANZ appears to have no present mechanism to obtain the views of consumers *per se* and their regular surveys are about the perception of FSANZ's performance, not about what others expect them to do. Ministers equally are subject to lobbying from many sides with variable consumer input. So one factor in the matrix might be to test whether consumer views have been rationally and systematically included or whether "squeaky wheels" and industry lobby groups have predominated.

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

No further comment.

Component 2.4.2 | FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of food standards.

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

FSANZ attends these meetings as an observer. The bewildering range of agencies involved from States/Territories and the formal structure of these meetings, dominated by the two major States, makes it unlikely useful interactions will occur at the meetings themselves. Therefore some form of prior or regularly scheduled routine engagement would be of benefit to all.

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

The present limited scope of FSANZ's activities will be redressed to some extent by revision of their legislation, resources and practices as proposed, making FSANZ a more attractive avenue for achieving broader policy objectives.

For instance, the improved definition of safety that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour will create opportunities for both bureaucrats and Ministers to achieve their objectives through FSANZ in public health, food safety, sustainability, security and two-way trade arenas.

Component 2.4.3 | FSANZ could take guardianship over key food safety databases (Australia only)

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

This initiative has the support of the Food Intolerance Network because, while current data is appreciated, much other data informing consumers and public health researchers and officials is fragmented and difficult to access. The more Australia knows about actual food consumption practices and effects on consumers the more likely it is that long-term health effects can be addressed.

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

FSANZ need to accept the role of collecting and analysing adverse experience events relating to food.

Several overseas jurisdictions (eg US Food and Drug Administration and European Food Safety Authority) and some Australian agencies (eg Therapeutic Goods Administration TGA, Australian Pesticides and Veterinary Medicines Authority APVMA, Australian Industrial Chemicals Introduction Scheme AICIS) perform this function and make public such information.

FSANZ has in the past rejected this role as unscientific, ignoring the fact that observation is the first step of sound science. This is how the dangers of thalidomide first become visible, for instance. In the absence of such a reporting system, the Food Intolerance Network has collected such reports *ad hoc* over 30 years into a searchable database of sorts which has identified trends and emerging issues, empowered consumers and informed lobbying for change. It can be searched for additives such as 160b or 635, or for symptoms.

https://fedup.com.au/index.php?searchword=&ordering=newest&searchphrase=all&option=com_s_earch&catid=84.

Foods can provide side-effects that are as powerful as those from medical drugs and these pharmacological side-effects need to be systematically acknowledged.

Component 2.4.4 | Further work could be done to establish information sharing arrangements with international partners.

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

This is certainly supported by consumers as an expanded role for FSANZ will require access to wider scientific expertise. It is our view that the EU is leading the world while the USA lags, the Global Burden of Disease Risk Factor Estimate from 1990 to 2016 showing their diet was the leading cause of death in the USA.

- What should be the focus of such information sharing arrangements?

The improved definition of safety that covers nutrition and effects of food on both short and long-term physical and mental health, attention and behaviour will require the widest possible scientific input about the burgeoning effects of Ultra-Processed Foods. Such expertise cannot be found within

any single agency, which is why the Food Intolerance Network continues to push for National Food Authority.

Component 2.4.5 | Statements of intent could be introduced into the Food Standards Code to assist with interpretation and enforcement.

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

Any change that increases clarity for enforcement has the support of consumers. But one wonders how, for instance, a Statement of Intent that regulates a Standard for say propionates 280-283 to limit how much can be used could deal with the emerging issue that of the 19 ways in which they can be added to food, only 8 are regulated by the Standard?

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

See above response for the problems that will emerge. Industry guidelines might be more sensible and flexible.

Component 2.4.6 | FSANZ could be resourced to develop, update and maintain industry guidelines to guide interpretation of food standards

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

Industry guidelines might be a more flexible way (rather than Codes of Practice or Statements of Intent) to address the problem of previously regulated food additives being added as ingredients in unregulated amounts to fool consumers, as detailed in comment on 2.2.6.

Guidelines could require that the functional ingredient includes the number of the food additive to which it is chemically identical, accurately informing the consumer. For example, you would need to be a food technologist to recognise that “fermented wheatflour”, in a bread ingredients list, is added as a preservative chemically identical to regulated Propionic acid 280. If all members of the food industry were subject to the same guideline, removing the competitive aspect, such guidelines are more likely to be effective.

- 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.

Component 2.4.7 | FSANZ could collaborate more regularly with jurisdictional enforcement agencies

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

Yes, but there needs to be real collaboration and an increased willingness to hear complaints and act on them.

Enforcement has been the most frustrating issue for consumers for many years, as detailed in our original submission <https://fedup.com.au/fin-campaigns/fsanz-act-review-2020> "... if a consumer wishes to lodge some sort of complaint about a food at present then often it is required to be lodged not where the food is purchased, but where it is manufactured. Some States do not accept complaints from consumers out-of-state. In some States enforcement is then left to a local council without any expertise to even understand the problem, let alone the powers to amend it..."

The Mexican stand-off between FSANZ and the Australian Competition and Consumer Commission ACCC is particularly galling, with each passing complaints backwards and forwards without resolution.

One should note, however, that State enforcement bodies are little better. Months pass and sometimes an apparent resolution is reached, but a check a year later shows the same problem continues without penalty.

Other

- Are there other initiatives that should be considered in this component?

No further comment.

6 Net Benefit

Consultation questions

Option 1

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

No comment.

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

No comment.

- What are the current delay costs to industry?

No comment.

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

No comment.

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

No comment.

Option 2

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

No comment.

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

For adverse side-effects from just one food additive:

As detailed in 2.3.3, somewhere between 20-67% of children react to sulphite additives (220-228) with asthma symptoms. Asthma Australia put the estimated cost of asthma in Australia in 2015 at \$28 billion. The Australian Human Rights Commission says there are about 5 million children in Australia. Taking a mid-point for prevalence, the impact of just this one additive on 2 million children affected might be as high as \$2.3 billion *per annum*. Since about two-thirds of people don't know about the connection between asthma and sulphites, there would be an immense benefit to FSANZ undertaking an education role.

See more particular illnesses linked to particular food additives in Table 4

https://www.slhd.nsw.gov.au/rpa/allergy/research/foodintolerance_racn.pdf

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

No comment.

8. Best option

8.1 Consultation questions

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

Yes, as good as it gets.

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

Yes.

8.2 Consultation questions

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

Yes broadly speaking but see concerns about consumer input throughout these comments.

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

Yes.

Consultation questions

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

Please add a recommendation that, although the current Terms of Reference excluded the possibility, the only way to clean up the hyper-byzantine food area is to conduct a root and branch review of the entire sector, canvassing the ideal of a National Food Authority, perhaps reporting to an Australian Food Council, and the imposition of levies on the food and grocery industry to help address critical research, monitoring and surveillance issues. Its roles could include:

1. a central unit to develop national food policy that considers emerging and strategic issues in food safety, sustainability, security and two-way trade;
2. strategic direction and funding of food research in all aspects including an explicit definition of safety for consumers that covers nutrition, both short and long-term physical and mental health, and effects on attention and behaviour;
3. centrally coordinated education for consumers and industry on food, food-health claims and food-related public health objectives;
4. development and approval of food standards at a national level with sunseting ensuring regular re-examination of new scientific evidence;
5. implementation and competent enforcement of food standards nationally and for import/export trade, including penalties for food fraud and crime; and
6. a trusted system to advise, survey and monitor failures and achievements of policy objectives

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

Members of the Food Intolerance Network feel strongly that the Impact Assessment should not exclude FSANZ from developing an education role with food safety education materials because there is no other body in Australia who undertakes this essential task. Details about just one aspect (sulphites and asthma) have been given above, but examples could be multiplied. This should not be left to unpaid volunteers as at present.

In 4. Rationale for government action – Lack of stakeholder support - we did wonder why consumers were not seen as stakeholders while industry was?

Thanks to members of the Food Intolerance Network who helped with this response. Any details mentioned above can be verified with citations and links by contacting Dr Howard Dengate confodnet@ozemail.com.au.

Thank you for the huge amount of work you consultants have all put into understanding and clarifying the multiple dimensions of this complex area.
