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Submitted to **Public Consultation - Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement**
Submitted on **2021-06-01 15:12:44**

About you

What is your name?

Name:
Health Coalition Aotearoa Food Policy Expert Panel

What is your email address?

Email:
fsing.health@gmail.com

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:
No

What sector do you represent?

Drop down list about which sector the respondent represents:
Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:
Health Coalition Aotearoa

Which country are you responding from?

Drop down list about which country the respondent is based:
New Zealand

If you selected 'other' please specify country:

An opportunity to submit any other information about your organisation you would like to provide.

Please provide your response in the box. :

Health Coalition Aotearoa is a coordinating, umbrella organisation for individual health experts and about 50 health and consumer NGOs, health professional associations, and academic groups. HCA benefits the community by promoting health for all New Zealanders, especially through the prevention of harm from tobacco, alcohol and unhealthy foods (as defined by the World Health Organisation). Our mission is to provide a collective voice and expert support for effective policies and actions to reduce harm, through a focus on the determinants of health.

This submission draws together views held by members of the Health Coalition Aotearoa (HCA) Food Policy Expert Panel. Health Coalition Aotearoa members may have additional or other views, which they may provide through separate submissions.

Policy Problems

1 Aside from the three key Policy Problems identified in this RIS, are there other key Policy Problems that should be considered as part of this regulatory impact analysis? If so, what are they and do they manifest differently in Australia and New Zealand?

Please provide your response in the box. :

The RIS must consider the following policy problem that applies both to Australia and New Zealand: The Act in its current form does not enable the food regulatory system to meet its primary goal of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices.

We know that, due to the success of the food regulatory system, New Zealanders are protected from short term food borne illness -- and this protection must be maintained. New Zealanders are not, however, effectively protected from long-term health impacts linked to food. One in three of New Zealand adults are obese according to the Ministry of Health. Although this is experienced inequitably with those adults living in the most socioeconomically deprived areas being 1.8 times as likely to be obese as adults living in the least deprived areas and the prevalence of obesity among adults differs by ethnicity, with 63.4% of Pacific, 47.9% of M■ori, 29.3% of European/Other and 15.9% of Asian adults experiencing obesity. This inequity is greater amongst children, with those living in the most socioeconomically deprived areas being 2.7 times as likely to be obese as children living in the least deprived area. New Zealand has the third highest adult

obesity rate in the OECD with the rates continuing to increase. The proportion of morbid obesity represents as much as 70-80% of this obesity growth.

Most New Zealanders have poor diets. For example a recent New Zealand study showed New Zealand children consume almost half of their energy intake (45%) from ultra-processed food by 12 months old, with consumption rising even higher by the time they turn five (51%). In New Zealand according to the Ministry of Health it is estimated that the number of people diagnosed with diabetes exceeds 250,000 people (predominantly type 2 diabetes). The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. The prevalence of diabetes in M■ori and Pacific populations is around three times higher than among other New Zealanders. The review of the Act, and the options for reform, must address this key public health issue and establish a revised food regulatory system that will effectively protect long-term public health into the future.

By failing to consider this policy problem, the RIS does not fulfil the review's Terms of Reference, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

In New Zealand, this policy problem has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, do not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

2 What examples or issues are you aware of in the food regulatory system regarding food sustainability?

Please provide your response in the box. :

The food regulatory system does not include standards to ensure that claims manufacturers make about sustainability are accurate, and this means that consumers cannot make informed choices about the sustainability of the food they purchase.
Any measure to incorporate sustainability into the food regulatory system must establish a strong, evidence-based system to ensure claims about sustainability are:
able to be independently verified by reference to clear and consistent standards
not used to promote foods that are unhealthy

3 What examples or issues are you aware of in the food regulatory system regarding recognition of Indigenous culture and food expertise?

Please provide your response in the box. :

We note that in addition to including recognition of Indigenous culture and expertise in the objectives of the Act, this should also extend to include assessment of how food regulatory measures affect M■ori people more generally.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Option 1: Retain the status quo

4 Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Option 1 represents a negative outcome for public health. While we do support the need for change and reform out of the three options provided in the RIS, Option 1 is, however, a better option than Options 2 and 3. As opposed to Option 2 and 3, Option 1 does not enshrine the new and harmful mechanisms which may threaten the health of the community proposed through Options 2 and 3. It is clear that the changes to the status quo proposed involve “less regulatory intervention and associated regulatory burden”, as stated in the draft RIS; it is also clear this will come at a cost to individuals and governments. For this reason alone the current system, which the draft RIS acknowledges has “managed to largely prevent the market failures that they are designed to address” represents a better outcome. We are concerned that Option 2 and Option 3 are in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

The current system prioritises the profits of the food industry and does not effectively protect public health as it fails to protect New Zealand consumers from long-term health effects linked to diet, including the key public health issues of poor diet and excess weight, and related non-communicable disease.

Despite the overall negative impact of the status quo, in our view the current system represents a better outcome for public health than options 2 or 3 presented in the RIS. This is because:

- The current system largely takes a proactive and preventive approach, in requiring food to be assessed as safe before approval and requiring standards to be fully assessed in the Australian/New Zealand context before adoption. We support the retention of this preventive approach. We do not support any move to a system that is responsive and intervenes to prevent harm after it has occurred.

- The current system correctly recognises that trade, while a factor for consideration, should not be elevated to be a key objective of the Act. The current clear prioritisation of public health and provision of consumer information ahead of trade must be maintained.

5 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

Risks to consumers and public health

Key risks to consumers and to public health in retaining the status quo are:

- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling. These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

- The health and economic risks caused by the impact of the food regulatory system on - the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to include an analysis of this risk.

- The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

Risks to government
A key risk borne by government is the significant cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these factors in the community. The cost of obesity in New Zealand has been estimated at more than $624 million a year. A food regulatory system that is not fit for purpose to promote a healthy food supply and to support interventions to prevent poor diet, and diet-related preventable disease, in New Zealand children and adults, will incur significant economic costs for all New Zealand governments. These risks must be addressed and quantified in the RIS analysis.

Risks to industry

We acknowledge that processed food companies may incur some costs under the current system because of the requirements of the application process and because of delays in approving applications. We do not, however, accept the quantification of these costs in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. In our view, this is likely to lead to a significantly exaggerated cost. We ask that the RIS use independent economic data that is applied to real world figures and not costings provided by the processed food industry as this is not independent and verifiable.

6 Do you have any data on hand that will help to quantify the cost of delays when bringing products to market through the current process? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please write any comments about these data in the box below.:

We note that the RIS assessment of the cost to industry of delays in bringing products to market must be independently verifiable and not based solely on self-reported industry data. The current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach cannot be used to demonstrate costs associated with the current system, as it is likely to lead to inflated figures.
As well as assessing the cost of delays in bringing products to market, the RIS must also assess the cost of delays in processing proposals for public health measures. See further discussion in response to question 7.

7 Are there other costs and benefits (qualitative or quantitative) that should be considered as part of this impact analysis? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, the RIS must assess in detail the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and diet-related preventable disease.

The RIS states (p18) its analysis draws out the regulatory impact for four key stakeholder groups, including public health – however it repeatedly fails to analyse the regulatory impact for public health. The RIS also fails to assess the economic costs linked to health outcomes, both for individuals and governments. This is a significant failing and means that the cost and benefit assessment throughout the RIS is incomplete and inaccurate. The RIS must be revised to include this analysis.

Costs and benefits that must be considered for option 1 include:

Costs

- The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. This can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system. See a case study below in response to question 8.
- The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health.
- The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.

Benefits:
-The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses that products are safe before they are put on the market
-The health and economic benefits of the current system in that it limits the number of new unhealthy food products on the market

8 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

Yes – quantifying the cost of delays and barriers to implementing public health measures can be assessed by considering existing assessments of the economic and health impact of policy interventions that were delayed under the current system.
This same analysis can be used to quantify the benefits of these policies once implemented – and analysis for options 2 and 3 must consider the effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make public health measures less likely or less likely to reflect best practice.

Case Study: Pregnancy warning labels on alcohol

The recent proposal in Australia for pregnancy warning labels on alcohol provides a good case study on the economic costs and health impacts of delays in progressing public health proposals in the current food regulatory system.

In October 2018, the Ministerial Forum on Food Regulation agreed that a mandatory standard should be developed and asked FSANZ to develop it as a priority. This work was completed in July 2020 when Ministers accepted a proposed draft standard – meaning that the time to complete the proposal was a few months under two years.
The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement for Pregnancy Warning Labels on Packaged Alcoholic Beverages (DRIS), published in October 2018. This DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at $1.18 billion per year in New Zealand and $171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at $75 662 (AUD). The DRIS is unable to predict the exact number of cases of FASD that will be prevented as a result of the labelling change, however the analysis concluded that only 183 cases of FASD in New Zealand per year, representing 1.18% of the total FASD cases per year in New Zealand, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, the economic cost per year incurred for each year of delay is estimated at $13.8 million, while the health impact is 183 additional individuals living with FASD.

The RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for options 2 and 3 – with analysis for those options assessing the impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy

warning labels are significantly less likely to be implemented in their current form under the reforms proposed in options 2 and 3, because of the increased importance given to trade and business concerns. This brings with it a significant health and economic cost, as outlined above.

This draft regulatory impact statement is only one component needed to consider the potential impact of any changes to the FSANZ Act and New Zealand's food regulatory system. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy. This review must be undertaken by an independent organisation or consortia with expertise in health economics/modelling as it relates to public health nutrition, prevention of obesity and non-communicable disease, as well as food policy and regulation. This review should consider how current food system has contributed to the burden of obesity and non-communicable diseases in New Zealand; and include modelling of future costs and consequences should New Zealand's food regulatory system fail to address the longer-term public health issues. It should also identify potential savings associated with reorienting the food regulatory system towards preventing diet-related disease and illness.

9 What risks are borne by your sector as a whole and by different stakeholders under Option 1 (i.e., retain the status quo)?

Please provide your response in the box. :

The interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are linked to the prioritisation of industry interests ahead of the public health of consumers, that is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.
Key risks to consumers and to public health in retaining the status quo are:

- The health and economic risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including preventable diet-related disease. These health risks are the higher risk of a poor diet, overweight and obesity, and diet-related preventable disease linked to weakened or non-existent regulatory measures to protect public health and improve labelling.

These health issues are also linked to economic risk, as we know that overweight and obesity lead to economic costs both for individuals and for governments. These risks are extremely likely to occur and have significant consequences, both for individual New Zealanders and in terms of costs to Government. These risks are not included at all in the draft RIS -- the RIS must be amended to include detailed assessment of these risks.

- The health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and diet-related preventable disease, and the RIS should be amended to included analysis of this risk.

-The health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

10 (Note: this question is for jurisdictional regulators) What resources (FTE) do you dedicate to monitoring and enforcement of food standards? What are the costs associated with these arrangements?

Please provide your response in the box. :

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose

11 Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support Option 2, component 1 as it represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures.
The RIS must be revised to address the issue of public health, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose. As the public health impacts have been explicitly excluded from this current document, a separate process must now be commissioned to provide a review and supporting evidence of the health costs and consequence associated with food regulation and food policy.

We are concerned that Option 2 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.
We discuss specific components in turn:

Objects and factors to which FSANZ must have regard

1.Clarification of definition of public health

We agree that the definition of public health should be clarified to include both short and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition however it must be amended to separate short and long-term health and include these two public health

elements as distinct objects and objectives in both s3 and s18 of the Act, with equal priority. This is required to ensure that all considerations of public health under the Act assess both short and long-term health separately. These elements should also be subject to distinct funding, resourcing and strategic planning, and the Act's framework is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal

We strongly oppose this element of reform, as it will undermine New Zealand's' health and detract from the primary public health objective of the Act.
The elevation of trade is unnecessary. The draft RIS itself notes that the status quo [which does not include trade as a core objective] has delivered good ...trade outcomes over many years'. This has been achieved because FSANZ must have regard to an efficient and internationally competitive food industry, and the promotion of consistency between domestic and international food standards when making decisions. Elevating the importance of trade will increase barriers to food regulatory measures that will promote and protect public health. This change will only further enable the processed food industry to challenge public health measures and will increase barriers to New Zealand adopting public health interventions that are not yet widely adopted consistently around the world. This will create a system where New Zealand lags behind in public health protection, when New Zealand should be a world leader.

Trade must remain subordinate to all objectives of the Act not only to the primary goal of public health protection, but also the objectives of providing '....adequate information relating to food to enable consumers to make informed choices' and the prevention of misleading or deceptive conduct. This is because trade is often cited as a barrier by the processed food industry when presented with labelling measures to improve public health.

3. Food sustainability

We support the inclusion of sustainability as a core goal of the Act, so long as this is limited so that it does not undermine public health. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

4. Indigenous culture and expertise

We support the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system, and of individual food regulatory measures, on M■ori, not only limited to the introduction of new food products.

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard

We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

Further changes to s18 – and role of FSANZ

We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s18. We do not support any amendment to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

FSANZ functions

We support changes to FSANZ's functions to align with the objectives of the Act, subject to our comments on those objectives above. We also support the inclusion of FSANZ functions to reflect work it is already undertaking and to support its work on issues related to long-term health.
We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers' hands.
We do not support a broad extension to FSANZ functions in food fraud and undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues but they should not be a key FSANZ focus.
Establishing criteria in the Act that the Food Ministers' Meeting must meet to request a review of a draft regulatory measure.
We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure.

Costs and benefits of Component 1
We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.
The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests

and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo).

12 If FSANZ's objectives were broadened to include sustainability, how should sustainability be defined? For example, do you support a limited definition of sustainability (i.e., environmental impacts) or a broad definition of sustainability (i.e., environmental, health, economic and social impacts).

Please provide your response in the box. :

We support a definition of sustainability that reflects environmental sustainability and incorporates health impacts. This must be designed so that protection of public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, for example, sustainability claims on unhealthy food products.

There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation must not be permitted.

13 What economic opportunities might arise for Australian and New Zealand industry from a greater focus on sustainability?

Please provide your response in the box. :

No response

14 How can FSANZ's activities better recognise indigenous culture and food expertise? Is this the right framing? What differences between the Australian context and the New Zealand context are important to consider? What changes are required to the FSANZ Act to enable this?

Please provide your response in the box. :

In New Zealand, the food regulatory system has an impact on more vulnerable and marginalised populations which has equity implications particularly for M■ori and Pacific populations in New Zealand who suffer a disproportionate burden of diet-related disease. The current food system is contributing to poor health outcomes particularly for M■ori and Pacific populations in NZ and high burden on the health system. Priority groups such as M■ori and Pasifika are also more likely to suffer from diet-related non-communicable diseases. This undermines New Zealand's responsibility to public health under the Crown's Te Tiriti o Waitangi obligations. Equity issues, such as these, must be considered in all food regulatory decisions.

Given the bilateral nature of this regulatory reform, it is important that New Zealand, in particular M■ori, does not have a diminished voice in this regulatory review process as this would reduce the likelihood of meeting Te Tiriti o Waitangi obligations. The FSANZ Act must endorse requirements of Te Tiriti o Waitangi to protect M■ori health. All decisions about the FSANZ Act need to be made within a framework that upholds Te Tiriti o Waitangi and the Crown's obligations to M■ori. We do not speak for M■ori, and we are gravely concerned that the current proposals have not consulted with M■ori, and do not appear to consider equity or Te Tiriti considerations. We consider that the Government must reconsider the consultation and engagement with M■ori on this review as a matter of urgency and consider costs, benefits and risks relevant to the Crown's obligations under Te Tiriti.

15 What economic opportunities might arise for Indigenous businesses from bringing traditional goods to the broader market?

Please provide your response in the box. :

No response

16 Would the impact of pursuing Option 2, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers and to an increased economic burden for New Zealand governments, through increased health expenditure.

Any reduction in oversight, transparency and rigour in governance and risk assessment necessarily endangers public safety, health and confidence in the food system.
We support an efficient and effective food regulatory system and agree that it may be appropriate to have different approval processes based on level of risk to ensure an efficient use of resources. To that end, we support some elements of this component so long as particular safeguards are met. The combination of reforms proposed, however, represents a significant shift to a system that even further prioritises private profits and shifts the burden of risk onto New Zealand consumers. We do not support this and will discuss each element of component 2 in turn.

Using other regulatory instruments: codes of practice and guidelines

We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to

complement or add to existing standards. These instruments must be government led and mandatory, we do not support voluntary or industry-led food regulatory measures. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.
We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems and agree that only low risk issues are suitable for inclusion in codes of practice.

Risk framework for applications and proposals

In theory, we support the idea of a risk-based model where low risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. In practice, support will depend on the exact details of the model proposed: the types of applications and proposals that are considered low or high risk, and the pathway that will apply. We note the proposed risk framework in the RIS (Table 5) and make the following comments:

- Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on diet-related preventable disease
- While evidence of immediate impact on health (and other factors) should be considered, long-term impact must also be considered. Many applications or proposals may not have an immediate impact but may show impact over time.
- We do not support any measures that are industry-led or that allow the industry to self-substantiate to support an application.

This risk-based framework must still involve FSANZ assessment and decision making to approve each application or proposal. We do not support decision making pathways that rely on industry self-substantiation or automatic approvals.

We agree that a risk framework should be developed outside the legislative reform process, and that this framework must be developed with all governments that form part of the food regulatory system. This must also be subject to stakeholder consultation, and regular review and oversight once in place, to ensure there are no negative outcomes.

It will be important to carefully define the types of amendments considered low risk, to limit it to those issues that do not have any impact either on short-term public health and safety, or on long-term public health.

When designing this risk-based system, care must be taken to consider the cumulative impact of changes to the decision-making process on the food supply and to consumers' health. For example, streamlined application processes may lead to a significant increase in ultra-processed foods on the market, which may have a negative impact on consumer health.

Delegation by FSANZ Board and Food Ministers Meeting

We do not object to the proposal that the FSANZ Board could delegate some low-risk decisions to the CEO, and that Food Ministers could delegate some low-risk decision-making abilities to Department officials. This could assist in streamlining decision making processes and reduce delays, while ensuring current processes are followed for decisions that are not low-risk.

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process, and the details of that process. Any new decision-making process should also be subject to review after a period of operation.
We consider it is very important to ensure that jurisdictions are able to have oversight of amendments to the Food Standards Code.

We do not support further delegation that would allow the Food Ministers to delegate to the FSANZ Board.

New product approval pathways

Three new potential pathways to bring a product to the market are put forward in Component 2. They essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). There is also no public health pathway for new or amended food standards to protect public health.

Accepting risk assessments from overseas jurisdictions -- automatic adoption and minimal checks

We strongly oppose a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health. This is because automatic adoption of international standards is likely to result in minimum protection for public health and safety rather than aiming for international best practice public health measures. International standards often represent the floor of what regulation is necessary and not an international best practice that New Zealand should be aiming for. In many cases New Zealand will want to go beyond what other countries have done, and the food regulatory system should be set up to encourage this.
FSANZ already has the ability to consider risk assessments from international jurisdictions, and we think this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the New Zealand context.

We note that in addition to an 'automatic adoption' approach, the RIS proposes a 'minimal checks' pathway, where FSANZ will '….undertake minimal assessments of the suitability of the standards within the New Zealand-New Zealand context of dietary and consumption trends and/or to consider different outcomes of assessments from such regulators.' It is difficult to fully assess this without detail of what these 'minimal assessments' will entail.

Any model of this nature must be extremely narrow and apply only to very low risk technical issues, must include a detailed assessment of the New Zealand context, including the impact on short-term and long-term health. International assessments must also include assessments of all comparable jurisdictions (rather than only selecting those where the issue in question has been approved) and must ensure decision makers have access to the data that supported the decision made by the international body or jurisdiction.

We strongly oppose the proposal in the RIS that these pathways to accept international risk assessments are not subject to approval by the Food Ministers. Current decision-making pathways must be retained, subject to other proposed amendments to streamline application and proposal pathways for low-risk amendments.

Industry-led pathways
We strongly oppose the proposal for an industry self-substantiation pathway. Allowing industry to declare their products safe without pre-market oversight represents a fundamental shift away from a preventive system that actively protects public health, to a system that shifts public health risks onto consumers in the pursuit of the food industry's profits. This will weaken our food regulatory system, undermine the primary purpose of the Act of protecting public health and compromise the integrity and independence of FSANZ.

We strongly oppose the proposal to implement this system by exempting products from being listed in the food standards code if they are 'generally recognised as safe' by qualified experts. We note the discussion in the RIS of the risks with this process and the criticism of its misuse in the United States.

17 Do you think this Component (Option 2, Component 2) should also include the ability for the Food Ministers' Meeting to delegate to the FSANZ Board for decision-making? If so, for what decisions should this delegation include?

Please provide your response in the box. :

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the aspirations for the food regulatory system which state the ministers will lead the meeting of aspiration aims.

18 What types of issues do you think can be appropriately dealt with in codes of practices or guidelines?

Please provide your response in the box. :

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Mandatory codes of practice could be used for measures that require detail and flexibility, for example a code for sustainable packaging. There must be a mechanism incorporated to ensure states and territories also have oversight over these form of food regulatory measures.

19 Can you provide data to quantify the administrative burden on industry associated with compiling the required evidence base to support a comprehensive risk assessment by FSANZ?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

20 Are you aware of any data to demonstrate the potential savings for industry if FSANZ had the statutory ability to recognise and adopt international risk assessments?

Please provide your response in the box. :

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the costs to public health and to consumers, both in terms of poorer health outcomes and associated economic costs, of adopting international risk assessments. This assessment must consider short and long-term health and consider the overall, long term effect of this approach on the standard of public health protection applied in New Zealand. Adopting international risk assessments risks lowering the standard of protection in New Zealand, resulting in New Zealand falling behind international best practice.

21 Would the impact of pursuing Option 2, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

22 What are examples of novel food products and ingredients and new technologies used in the production and testing of food products that could be appropriately and safely introduced using regulatory sandboxes?

Please provide your response in the box. :

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework. These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23 Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We strongly oppose the introduction of regulatory sandboxes. This proposal represents an unacceptable risk to public health and has no place in a food regulatory system. Food regulation must be protective and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

We note the RIS provides no examples of a regulatory sandbox system in operation in food regulation in other jurisdictions and provides no clear analysis of the risks and benefits that are likely to arise. It is not clear to us why a policy proposal has been presented without a clear understanding of when it could be used and what the impact of that would be.

The RIS provides international examples of regulatory sandboxes used in financial regulation. The UK system that is discussed provides a system for finance start-up companies to test the viability of their products on consumers before undertaking the standard approval process. The finance sector cannot and should not be compared to food regulation.

This proposal also raises issues in terms of FSANZ's independence and integrity, as it anticipates applications being assessed and negotiated on a case-by-case basis. This does not represent transparent, independent decision making that is essential for the integrity of the food regulatory system.

We are also extremely concerned that the RIS says the standard on health claims is a barrier to innovation, appearing to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards relating to labelling of any kind, including claims. We do not accept the view that rules around claims on packaging are a barrier to innovation. Those standards regulate how a company can market and label their food, they do not stop or delay the introduction of a new product.

We do not support regulatory sandboxes in any way, and most particularly in relation to labelling or claims of any kind. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

24 Should a function for FSANZ's to collect, consolidate and communicate food safety data be legislated?

Please provide your response in the box. :

FSANZ's key priority must be to develop food standards. Any function that is not central to this function and risks FSANZ's capacity to focus on assessing applications and proposals must be questioned, FSANZ's existing functions must be resourced as a priority.

25 Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Neutral

Please provide any comments in the box below. :

FSANZ and Food Ministers joint agenda setting:

We support FSANZ working with Food Ministers to set a joint agenda and strategic direction for the food regulatory system. It is imperative that protections are built into the system to adequately resource and prioritise work that protects public health, long-term health and diet-related preventable disease in particular. Consideration must be given to how this agenda will be set and how stakeholders will be consulted in determining priorities.

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts:

We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards.

Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

26 Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?

Please provide your response in the box. :

If FSANZ is given a function to create a data bank, access to this data must be without charge to public health researchers and public health and consumer organisations.

27 Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

We do not support this.

Changing FSANZ Board arrangements

We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.
We recommend retaining the current arrangements for nomination to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills based approach, although of course we expect that members nominated by external organisations do have relevant skills. We also do not support reducing the Food Ministers' role in signing off Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system are able to have oversight of Board appointments.

We do support a move to virtual Board meetings as a cost-saving measure.

Investment into business solutions

We support an online portal; however this must be resourced separately in addition to FSANZ's usual operations.

We understand the RIS notes it is outside the scope of the review, however we are concerned about the suggestion that FSANZ consider using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards – for example additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label.

New cost-recovery mechanisms for industry-initiated work

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system.

There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australian and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

28 What are the key risks borne by different stakeholder groups for this option? What is the likelihood of these risks, and what would be the magnitude of consequence if they occur?

Please provide your response in the box. :

The combination of reforms in Option 2 prioritise the profits of the food industry, while placing the burden of risk, both from a health and economic perspective on individual Australia and New Zealand consumers and on health system of both countries.
The key risk associated with Option 2 is that it will not create a food regulatory system that is fit for purpose in achieving its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices.
Option 2 represents a further prioritisation of industry interests ahead of public health, with many components of reform likely to create significant public health and economic risks over time by enabling the processed food industry to sell more ultra-processed food that is harmful to health with less oversight and by increasing barriers to public health reform.

29 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 2? If so, who would bear these costs and benefits?

Please provide your response in the box. :

Yes, these are largely similar to those we identified in relation to Option 1. The RIS must assess in detail both the qualitative and quantitative costs (and benefits where they exist) in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments.

This analysis must include:

The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to promote public health. This can be assessed by reference to costs saved and health risks reduced by existing public health measures that were delayed under the current system, together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.

The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health, including preventable diet-related disease. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on business, in our view public health reforms will be more difficult to progress and approve under option 2.

The administrative cost to public health and consumer organisations of participating in lengthy, delayed processes to review and amend food standards.
The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short and long-term health impacts, and consider the impact of option 2 on the number of unhealthy foods that are sold and promoted to consumers

Costs and benefits of Component 1

We do not agree with the statement in the RIS that there is a clear net benefit to component 1, and that the proposed changes would not impose any costs on stakeholders.

The cost/benefit assessment for component 1 is not comprehensive. It does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' health and the economic cost for government. As we discussed in an earlier question, the RIS says that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include detailed assessment on the costs to public health and to consumers of elevating trade and industry interests. This analysis must include health and economic costs that will be linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, component 1, as compared to Option 1 (status quo)

30 Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result, both qualitative and quantitative.

We do, however, have data and analysis to understand the impact of poor diet, overweight and obesity and diet-related preventable disease, from both a qualitative and quantitative perspective. This data should be used as the foundation for a detailed assessment in the RIS of the impact of the proposed reforms on public health outcomes.
We know how many New Zealanders have a poor diet, are above a healthy weight and who have diet-related preventable diseases such as Type 2 diabetes, heart disease and some cancers. We also know the contribution that poor diet and overweight and obesity make to the burden of disease in New Zealand. We also have data on the economic costs of obesity, including costs borne by individual New Zealanders and by governments.

Using this existing data as a foundation, the RIS must assess the impact on health outcomes and economic burden from estimated changes in the number of New Zealanders who have a poor diet, overweight and obesity and preventable diet-related disease. Of course, it will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented. The RIS can, however, quantify the economic and health costs of a slight change in these levels. The cost of obesity in New Zealand has been estimated at more than $624 million a year. The latest and only estimate of the cost of productivity loss from obesity to New Zealand by Lal et al. (2012) estimated that in 2006 the total cost lay between $98m to $225m. Since 2006, the prevalence of adult obesity has increased from 26% to 31%.

31 Should the Act provide for more of its work with industry to be offset through cost recovery mechanisms? For example, should FSANZ seek to broaden the types of applications for which it charges fees; should the provision of interpretative advice attract fees; or are there other activities for which FSANZ should cost recover?

Please provide your response in the box. :

The current system prioritises paid industry applications that benefit one or a small number of food manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and

higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.
If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ’s ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not affect proposals. We also recommend the introduction of a specific public health pathway to request changes to the food standards code, that must be addressed and responded in a timely way, and acknowledges resource constraints of public health organisations.

32 What would be the impact on industry (especially small to medium businesses) or consumers of FSANZ cost-recovering for a broader range of activities?

Please provide your response in the box. :

This question must also consider the impact on public health. In particular, the analysis of this question must assess how the current cost-recovery models affect public health, and the likely impact of expanding those cost-recovery measures. This must include assessment of how paid industry applications are currently prioritised ahead of proposals to benefit public health, and the delays that are attributable to this system.
The RIS assessment must also consider how FSANZ would be able to undertake the additional responsibilities that it would take on under the proposed reforms and assess how this expansion may affect the development of public health measures.

33 How often do you currently engage with the food regulation system through making applications to change food standards?

Please provide your response in the box. :

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.
We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

34 What are the most significant barriers that you or your organisation faces when trying to engage with the food regulation system?

Please provide your response in the box. :

The current system prioritises paid industry applications above proposals for significant change and review to benefit public health. This means that, where FSANZ does consider a proposal or application that is likely to have a public health benefit, there is often a significant delay. The long time period and the many steps that are often involved before finalisation mean that the process of change is very resource intensive for public health organisations and creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for New Zealanders often lag behind evidence and best practice for long term health outcomes.

The review must consider how this imbalance can be addressed to ensure that public health is prioritised above private profits. One element of reform must include a specific public health review process and a review process for consumers, to seek amendments to the Food Standards Code that are in their interests. The process must recognise the resource constraints of public health and consumer organisations and must enable evidence review by FSANZ.

35 Would you be more likely to engage with the food regulation system through the new pathways proposed in this regulatory impact statement? If so, which pathways would you be most likely to use and why?

Please provide your response in the box. :

No. The pathways are all industry focused and don’t allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms.

The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

Option 3: Build on FSANZ's role to reinforce the bi-national nature of the joint food standards system

36 Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Extending FSANZ’s functions to enable FSANZ to coordinate action to respond to food incidents and food recalls, either in consultation with the government or on its own initiative, is unnecessary as we see no issues with the current system. FSANZ Is not appropriately resourced to take on this responsibility and should focus resourcing on its current remit.

We are concerned that Option 3 is in no way aligned with the aspirations for the food regulatory system which has already been consulted on by all impacted stakeholders.

37 Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?

Please provide your response in the box. :

no response

38 Is FSANZ coordinating food recalls /incident response a function that would be equally valuable for Australia and New Zealand?

Please provide your response in the box. :

We do not think it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incidence response, for the reasons explained in response to question 36.

39 Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

Guidance on the intention of food standards and how to interpret them (particularly for enforcement purposes) would provide consistency in interpretation across sectors and jurisdictions and provide clarity and remove interpretive doubt. This would also enable stakeholders to better access information to allow them to comply with the Food Standards Code. However, some elements of this component go much further than this.

Resourcing of FSANZ to enable it to perform any elements of this guidance role must be additional and not at the expense of FSANZ's existing functions.

In relation to the specific guidance mechanisms flagged in the draft RIS:

Statement of intent alongside food standards

We support FSANZ providing statements of intent alongside food standards setting out the intention of the standard. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ to update and maintain industry guidelines
Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led, industry should not have a role in developing the guidance provided by FSANZ.
Access to getting a binding standard, requests for clarification of food standards or for specific guidance on interpretative issues must be equal for all stakeholders (consumers, public health stakeholders and industry) and not just a right for industry. No one stakeholder should be prioritised over others.

FSANZ to assist businesses to prepare dossier to substantiate general health claims

We do not support the current system of self-substantiation but agree that guidance is necessary to ensure organisations comply with regulations for general level health claims. We do not think that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under resourced to deliver its current remit and changes should instead be made to better resource and equip States and Territories to undertake a support role in assisting businesses to prepare dossiers to substantiate general level health claims. It is important that this role is done before products are on the market, so that claims are not made of unsubstantiated food-health relationships before FSANZ is able to assess them. Companies could still sell the product without the claims whilst claims are being processed.

Ministers to determine whether a product is a food or a medicine

We are not supportive of changes to give the Minister for Health powers under the FSANZ Act and the Therapeutic Goods Act to determine if a product is a food or a medicine. Whilst the alignment of definitions between the acts would streamline the systems and create consistency for industry and consumers the power to make this determination should not sit with a single minister.

40 Are you aware of any data to demonstrate the current impost on industry from interjurisdictional inconsistencies in the enforcement of standards?

Please upload any relevant data here. :
No file uploaded

Please provide any comments about these data in the box below.:

No response

41 Is the notion of FSANZ taking on enforcement activities equally valuable for both Australia and New Zealand? Why / why not?

Please provide your response in the box. :

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

42 Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please:

We do not support FSANZ having a limited enforcement role or being either the bi-national or New Zealand-only regulator. The conflict of interest in this role would be too great, particularly given the vast number of additional powers and functions FSANZ is intended to have under this RIS.

Those additional powers and functions proposed by the RIS that enable FSANZ to set guidelines for interpretation and to make binding interpretative statements will enable the States and Territories to better enforce the provisions in a more cohesive and consistent manner. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

43 Are you able to provide detail on the costs or resources each jurisdiction invests into enforcement activities?

Please provide your response in the box. :

No response

44 Would the impact of pursuing Option 3, Component 4 represent a positive, negative or neutral outcome for your sector?

Please select from the dropdown options.:
Negative

Please provide any comments in the box below. :

The draft RIS is unclear as to what legislative changes are intended to implement this component 4. We do not support any changes to the objectives in s3 or s18, or to the items to which FSANZ must have regard in s18, to enable FSANZ to extend New Australia and New Zealand's influence on the international stage. We do not support the extension of FSANZ role from 'standard setting' into food policy. As noted in the draft RIS the Food Ministers Meeting is the "body that sets the policy direction for the joint food standards system" (p15), this role should remain in the Food Ministers hands.

45 Are there other costs and benefits (qualitative or quantitative) that should be measured in relation to Option 3? If so, who would bear these costs and benefits?

Please provide your response in the box. :

The cost/benefit assessment for Option 3 is not comprehensive. It does not consider any costs associated with the reallocation of FSANZ resources into new areas on its current remit. This is likely to result in a further deprioritisation of proposals and public health outcomes as applications are still prioritised and FSANZ will have even less time and resources to allocate to proposals. elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to consumers' long-term health and the economic cost for governments associated with poor health outcomes.

46 What activities or functions within Option 3 do you think could be supported through cost recovery mechanisms?

Please provide your response in the box. :

We do not support the prioritisation of paid industry applications ahead of public health proposals. We do not support the introduction of further cost-recovery mechanisms, as this will likely result in additional prioritisation of those paid activities at the expense of public health measures, and of achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required. There is nothing in Option 3 to address the inequality between applications and proposals, nor to prioritise proposals which the RIS specifically states "often have system-wide impacts" (p36) and "arguably has a wider reaching benefit for the broader Australia and New Zealand public" (p37). We strongly recommend the introduction of a public health pathway to request reforms to the food regulatory system.

Overarching views on the RIS

47 Do you think the current options presented in the draft RIS represent the full spectrum of policy approaches that governments might consider?

Please provide your response in the box. :

No.
The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its

objectives in relation to the protection of long-term public health and providing consumers adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised over public health and the status quo, whilst itself inadequate, would be better for the health of New Zealanders. Policy approaches should result in a revised food regulatory system that effectively protects long-term public health into the future and enables consumers to make informed choices.

Other policy approaches should be developed to address the missing policy problem: that the Act in its current form does not enable the food regulatory system to meet its primary objective of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of adequate information to enable consumers to make informed choices. Policy approaches that would address this policy problem include, but are not limited to:

- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.
- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.
- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.
- Set statutory timeframes for proposals.
- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the jurisdictions.
- Undertaking a review of the health claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health claims promote or detract from public health and the promotion of healthy diets

48 Which components of each reform option do you consider to be your sector's highest priorities? Note: Option 2 consists of six components, and Option 3 consists of four components building on Option 2. See Section 5 of the draft RIS for details of each component.

Please provide your response in the box. :

Option 2
None. We do not think any of components 1,2,3,4,5 or 6 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of the components of Option 2 that could be implemented, we do not think any of the components of Option 2 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

Option 3

None We do not think any of components 1,2,3 or 4 should be pursued, and certainly not prioritised.
Whilst there are some minor elements of some of component 2 of Option 3 that could be implemented, we do not think any of the components of Option 3 should be prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health (see our responses to questions 1, 46 and 48).

WE consider the priorities for the FSANZ Act review should be:
1) Commission an independent review of the health costs and consequences associated with food regulation, food policy and the FSANZ Act (as outlined in response to Q1)

2) Clearly define the role of food regulation and food policy in protecting public health as it relates to obesity and preventable diet-related disease, illness and disability

3) Repositioning the food regulatory system to meet New Zealand's current and future health needs associated with the prevention of obesity and diet-related disease, illness and disability. Changes to the FSANZ Act must bring it into line with the Aspirations for the Food Regulatory System document, in particular to support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. This means that future standards and regulatory decisions would need to prioritise the impact on population health and the promotion of healthy foods consistent with the New Zealand Dietary Guidelines. e.g. fortification standards, health and nutrition claims, mandatory Health Star Ratings.

Alignment with draft Aspirations for the Food Regulatory System

49 Do you think that the reform options presented in the draft Regulatory Impact Statement align with the draft Aspirations for the Food Regulatory System? Which option and why / why not?

Please provide your response in the box. :

No.

None of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System as they are not in line with the overall vision of

the aspirations and nor do they enable the high-level aims to be met (see analysis below). The Aspirations for the Food Regulatory System state that the 'Food Ministers' are the leaders in meeting the aims of the aspirations and yet many of the components in Options 2 and 3 seek to limit the involvement of the Food Ministers which will reduce their capacity to meet the aims of the aspirations.

We note that in the Communique following the most recent meeting on 14 May 2021, Food Ministers '...supported the use of the draft aspirations in guiding the direction for the modernisation reform work of the Australia and New Zealand Food Regulation System'. As it is currently drafted, the RIS does not reflect the draft aspirations and is not consistent with the Ministers' intentions. The RIS must be revised to ensure the FSANZ Act enables the food regulatory system to meet the aspirations set by all participating governments.

The communique further noes that Ministers will re-consider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:

- Include an additional aim the ensure the food supply is equitable and enables equal access to healthy foods throughout Australia/NZ for all Australians/New Zealanders.

- Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short-term and long-term risks related to food.

- Aim 4 is clarifies to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

Analysis of RIS Options against Vision and Aims of the draft Aspirations for the Food Regulatory System

Analysis of the VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.
- Option 1 – status quo – the current system is primarily focused on the interests of the food industry and on protecting Australians and New Zealanders from short term safety concerns. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on "improving and protecting public health".
- Option 2 – modernise Act – the combined effect of the 6 components of this option is to:
-- reorient the Act to be even more industry focused and even less collaborative as other stakeholders are further marginalised – less collaborative;
-- remove safeguards resulting in less focus on improving and protecting safety;
elevate the importance of trade and impact on business, resulting in greater barriers to implementing public health measures
-- fail to take any action to enable the efficient processing of proposals which could be done by adequately and separately resourcing this stream of FSANZ work from applications work;
-- fail to improve outcomes for public health which together with the above points results in even less public health improvement and protection than option 1.

Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option is to:

-- centralise power and control with FSANZ, marginalising State and Territory input and impact, this results in less collaboration between governments and less collaboration between stakeholders and State and Territory governments;
-- focus FSANZ attention and resources on new functions (i.e. recalls and enforcement) when it is already under resourced to deliver its current remit. This will likely result in a further de-prioritisation of proposals and strategic project work and therefore even less public health improvement and protection than option 1.

Analysis of Aim 1: to protect the health and safety of consumers by reducing risks related to food

- As previously mentioned, we strongly recommend that Aim 1 is clarified to make it clear that the health and safety of consumers will be protected by reducing risks of both short- and long-term risks related to food.
-- Option 1 adequately aligns with this aim in respect of short-term risks (food safety) but does not align with this aim in respect of the long-term health risks related to food. It prioritises applications for new and novel foods and products, often ultra-processed and not good for health, above proposals for public health measures. This increases health risks for consumers as public health issues within the food regulatory system are not adequately addressed.
-- Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than option 1 and does nothing to improve the status quo in relation to long-term risks related to food.
-- Option 3 could result in no change in relation to short-term risks related to food as the status quo but does nothing to improve the status quo in relation to long-term risks related to food.

Analysis of Aim 2: enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled
-- Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.
-- Option 2 does not align with this aim as it further de-prioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.
-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for consumers.

Analysis of Aim 3: support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues
-- Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The RIS itself notes that proposals "often have system-wide impacts" (p36), these system wide impacts are what promote healthy food choices and enable responses to health issues.
-- Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed and not healthy food choices and not with enhancing nutritional qualities, to enter the market with more ease and less oversight.
-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it

removes oversight and decision making from participating governments. This is likely to result in better outcomes for industry and not for health and consumers.

Analysis of Aim 4: enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand
-- Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. The resulting market, however, is not diverse, it is becoming increasingly swamped with ultra-processed foods that are not sustainable from a health nor environmental perspective. This contributes significantly to the immense economic burden of chronic disease on consumers themselves and all Australian and NZ governments.

-- Option 2 further encourages the development, production and sale of unhealthy food products which will result in increasing economic benefits for industry. It will, however, result in an even greater economic burden from chronic disease on both consumers themselves and all Australian and NZ governments and will have increasingly damaging impacts on health and environmental sustainability.

-- Option 3 does not align with this aim as it concentrates power and control with one body, this undermines the integrity of the joint food regulatory system as it removes oversight and decision making from participating governments. This is likely to result in economic benefits for industry but will not result in any diversification of the food supply or any improvements to the sustainability of the food industry from a health or environmental perspective. Nor address the immense economic burden of chronic disease on consumers themselves and all Australian and NZ governments.